

# **JOURNAL**

OF THE

## **SENATE**

OF THE

### **STATE OF ALABAMA,**

BEGUN AND HELD AT THE TOWN OF TUSCALOOSA, ON THE THIRD  
MONDAY IN NOVEMBER, 1828,

BEING THE TENTH ANNUAL SESSION,

OF THE

**GENERAL ASSEMBLY OF SAID STATE.**

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**TUSCALOOSA:**

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**MDCCCXXIX.**

# JOURNAL OF THE SENATE.

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ON the seventeenth day of November, in the year of our Lord one thousand eight hundred and twenty-eight, being the day fixed by law for the meeting of the General Assembly of the state of Alabama, at the city of Tuscaloosa, the following members of the Senate appeared and took their seats, to wit:

From the senatorial district composed of the counties of Mobile, Washington and Baldwin,

Monroe and Clarke,

Conecuh and Butler,

Pike, Henry, Covington & Dale,

Wilcox and Marengo,

Perry,

Dallas,

Montgomery,

Bibb and Shelby,

St. Clair and Blount,

Madison,

Jackson,

Lauderdale,

Limestone,

Lawrence,

Franklin,

Morgan,

Tuscaloosa,

Jefferson and Walker,

Pickens, Fayette and Marion,

Greene,

Autauga,

Jack F. Ross.

Neal Smith.

John Watkins.

William Irwin.

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Richard B. Walthall.

Horatio G. Perry.

James Abercrombie.

Thomas Crawford.

David Conner.

John Vining.

Samuel B. Moore.

Hugh McVay.

Nicholas Davis.

David Hubbard.

Theophilus Skinner.

Jesse W. Garth.

Levin Powell.

John Wood.

James Moore.

Zachariah Merrewether.

William R. Pickett.

And a quorum, consisting of the majority of the whole number of members of the Senate being present, and the members having produced their credentials, the oaths prescribed by the constitution of the State, and by an act entitled "an act to alter and amend the several laws now in force in this State to suppress the evil practice of duelling," were then administered to all the members present.

On motion of Mr Powell, Hugh McVay was called to the chair, and F. S. Lyon appointed Secretary of the Senate *pro tem*.

The Senate then, on motion of Mr Powell, proceeded to the election of a President, and upon an examination of the votes it appeared that the Hon Nicholas Davis, of Limestone, was duly elected: whereupon Mr Davis was conducted to the Presidents' chair, from whence he made his acknowledgements to the Senate, and proceeded to the discharge of the duties of his office.

On motion of Mr McVay, the Senate then proceeded to the election of a Secretary, and the election being conducted *viva voce*, it appeared that Francis S. Lyon was unanimously elected, who, having been qualified, entered on the discharge of his duties.

The Senate then, on motion of Mr Smith, proceeded to the election of an Assistant Secretary, and the election having been conducted according to the mode prescribed by the constitution, it appeared that George W. Crabb was duly elected.

James A. Bates was then elected Doorkeeper of the Senate.

On motion of Mr Smith, it was ordered that a message be sent to the House of Representatives to inform that body that a quorum of the Senate have assembled; that the Hon Nicholas Davis, of Limestone, has been elected President thereof; Francis S. Lyon, Secretary; George W. Crabb, Assistant Secretary; and James A. Bates, Doorkeeper, and that they are ready to proceed to business.

On motion of Mr Powell, *Resolved*, that the rules of order heretofore adopted for the government of the Senate be regarded as the rules of order and decorum for the government of the present Senate until otherwise altered or rescinded; and that fifty copies thereof be printed for the use of the Senate.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Tuesday, November 18, 1828.*

The Senate met pursuant to adjournment.

A message was received from the House of Representatives, by Mr Tunstall, informing the Senate that the representative branch of the Legislature had convened and elected the Hon Clement C. Clay their Speaker; Thomas B. Tunstall their Principal Clerk, Aaron Ready, Assistant Clerk; William B. McClellan, Engrossing Clerk; and John Tatom Doorkeeper, and were ready to proceed to business.

On motion of Mr. Vining, *Resolved*, That the following Standing Committees be appointed :

*A Committee on Propositions and Grievances; a Joint Committee on Enrolled Bills; A Judiciary Committee; A Committee on Privileges and Elections; A Committee on Inland Navigation; A Committee on Roads, Bridges and Ferries; A Committee on County Boundaries; A Committee on Accounts and Claims; A Committee on Schools and Colleges, and School and College Lands; A Committee on the State Bank; A Military Committee; A Committee on Divorce and Alimony, and a Committee on the State Capitol.*

On motion of Mr McVay: *Resolved*, That a committee be appointed on the part of the Senate to join such committee as have been or may be appointed on the part of the House of Representatives, to wait on the Governor and inform him that quorums of the two Houses have assembled, and that the General Assembly is ready to receive any communication he may think proper to make; whereupon Messrs McVay and Pickett were appointed on the part of the Senate.

*Ordered*, That the Secretary acquaint the House therewith.

Mr Smith offered the following resolution: *Resolved*, That there be a committee appointed on the part of the Senate to act with such committee as may be appointed on the part of the House of Representatives, to procure stationary and fuel for the use of the General Assembly during the present session, which was adopted; whereupon Messrs Smith and Merrewether were appointed on the part of the Senate. *Ordered*, That the Secretary acquaint the House of Representatives therewith.

A message from the House of Representatives by Mr Tunstall, their clerk: Mr President—The House of Representatives have adopted the following resolution: *Resolved*, that a committee of two members be appointed on the part of this house, to act with such committee as may be appointed on the part of the Senate, to wait on his excellency, and inform him that the two Houses are now organised and ready to receive any communication he may please to make. They have appointed on their part Messrs Coopwood and Banks.

Mr M'Vay from the joint committee appointed to wait on the Governor

and inform him of the organization of the two Houses, and of their readiness to receive any communication he might think proper to make, reported that the committee had performed the duty assigned them, and received for answer from the Governor that he would make a communication in writing to the two Houses this day at the hour of 12 o'clock.

A communication in writing was then received from the Governor by James I. Thornton, Secretary of State, which was read, and is as follows:

EXECUTIVE DEPARTMENT, TUSCALOOSA, Nov. 18th, 1828.

*To the Honourable, the Members of the Senate and House of Representatives.*

Fellow Citizens—The constitutional obligation which devolves on me, at the opening of your present session, cannot fail to inspire emotions of pleasure, accompanied with a serious consciousness that I occupy a relation to you, and to our country, which imposes important duty, and subjects to deep responsibility. The confidence which I feel in your wisdom, patriotism, and enlightened public intelligence, serves to alleviate the concern which arises out of the consideration of public objects as you will no doubt prove more than equal to all the high demands of your exalted and honourable stations. Whatever imperfection may be found in the Department which I have the honour to fill, your combined wisdom will furnish the remedy and the supply. You possess a recent evidence of the confidence of the people. To you they have confided the management of their present interests, and entrusted with you, at least in some degree, the regulation of their future prospects. Your individual relations to your country, are merged in your representative character. The cares of thousands are deposited on your shoulders; of thousands whose warm and generous reliance is alike honourable to them and to you. My co-operation with you, I trust will be ardent and devoted; and it will be my duty to submit to your consideration, without reserve or cautious hesitancy, such measures as are the dictates of an understanding which humbly claims to be honest, however limited, and of a zeal for the public interest, which may easily be mistaken, but which is conscious of being ardent and sincere. Our chief reliance however, must rest on the influences and direction of that Gracious and Supreme Being, who stoops to notice the affairs of men, and to whom all people and all nations peculiarly belong. To the great author of all blessings, it is our peculiar privilege and most incumbent duty, to render a constant tribute of gratitude, and to repose all our concerns on Him, whose benign power is able to effect all the purposes of wisdom and of goodness. And let us not enter upon our public labours before we have called into special and grateful review, the favours which have crowned the year, the health which has so universally prevailed, the early and the latter rain which have cherished for us the fruits of the earth. In short, the peace and enjoyment which have attended the numerous blessings of a benignant Providence

It is delightful to observe that there are many evidences of the growing prosperity of our country, and but few circumstances which militate against the attainment of that political happiness to which, I trust, our affairs are constantly tending. The comforts of competence, if not the abundance and splendors of wealth, are widely and generally diffused. The embarrassment consequent upon former errors still continues with a serious degree of pressure; but the burden is constantly diminishing, and industry, combined with suitable economy, will soon entirely remove it. There is already an evident attention to those moral and intellectual improvements which contribute to the rational dignity, sober wisdom, and decent frugality of private life. The future and increasing prosperity of the people, will much depend upon the public sentiments which are cherished, the honourable estimation in which industry and frugality may be held, the discouragement of every species of luxury and show which are unconnected with use; the cultivation of that correct taste which prefers elegant simplicity of manners, to the burdensome and ruinous glare of undistinguishing luxury, or mistaken refinement. The more rational and virtuous any people may be, the more simple is the cast of their lives and manners. They alone can preserve that dear and justly valued independence, which the idle, the luxurious, and the splendid, can never continue to enjoy. We are creatures of imitation, and there is a call on all public functionaries, on all individuals having influence in the circles



in which they move, to furnish the correct example upon which the public manners may be formed. It is confessed that we are required to act rather than to legislate on subjects of this nature; but what enlightened patriot can refuse to benefit his country, either in the halls of legislation, or in the tranquil walks of private life.

The policy of the General Government in the late imposition of an increased tariff on certain imported articles, has excited much apprehension here, as well as in other states of the Union. It probably will have a material influence in checking our prosperity, unless we promptly avail ourselves of every means within our reach to obviate or lessen its injurious consequences. It may not be profitable here, to use terms of harshness and reprobation in regard to this measure which it may justly deserve, but to consider it as a thing which exists, at least, under the forms of the constitution which must be counteracted in all its bad tendencies on our prosperity, while it continues to exist, and which must be removed as soon as possible, in the ordinary and regular way prescribed by our Federal Institutions. That every country should encourage, to a certain extent, its own internal resources, consists with a wise, just and liberal policy. This ensures a more abundant supply in the general market of all nations, and guards particular communities against occasional difficulties in procuring essential articles, or the enhanced and unreasonable price which would be consequent on a supply short of the pressing demand. But this encouragement may be carried so far as to prove more injurious than useful, and hence the proper degree of it, has occupied the wisdom of politicians and political economists in every age. It would seem to be a plain dictate of reason, if it be not also confirmed by experience, that it ought not to be carried so far as to exclude general and active intercourse with other nations. Every country is able to add something to the general stock of convenience and prosperity, and in a just and natural proportion, imparts and receives the advantages resulting from mutual intercourse.

The great author of all, to whom the happiness of every country and of every nation is alike the object of beneficent concern, seems to have ordained, and to have pointed out in the general arrangements of nature, that the maximum of happiness is to be acquired by the liberal communication of mankind with each other. The means of this necessary communication are amply provided; for oceans are made to roll, and rivers to flow, that men might have the opportunity to assist each other, by the exchange of the various productions, which all have some peculiar facility to acquire, resulting either from nature or from art. The principle of selfishness, cherished by individuals or nations, is not likely to result in permanent advantages. If it be suited to any condition of the human family, it must be to that rude and barbarous state in which the impulses of the passions are strong, the exercises of reason circumscribed, the sense of justice unimproved and precarious. But in the present condition of the civilized world, whatever delightful visions of insulated happiness any theoretic politician may be disposed to indulge, it will probably be found by experience, that entire independence on the resources of other nations, excluding intercourse with them, is not desirable, if it could be obtained, and not likely to benefit any people, either in the facilities of living, or the improvement of the moral and intellectual powers. The just point seems to be to carry encouragement so far as to prevent too much dependence on others, and to operate as a source of constant and healthful competition, beneficial to all parties. But general reasonings aside, there is a peculiarity in our situation which renders this measure of fearful importance, and makes it well calculated to awaken the most reasonable anxiety. The staple production of the State—the article on which almost all our labour is bestowed—is placed by it in an attitude so doubtful, that it is impossible, with any certainty, to calculate its future value. Nor is our situation less precarious in the purchase of those articles which are of indispensable necessity to us. It must be considered a matter of absolute certainty, that the tariff will effect, in a material degree, the price of all our staple production. The tariff imposed amounts to a virtual prohibition; and those with whom we have heretofore dealt in the raw material, and received in return, their manufactured articles, will cease the purchase of the material from us, because the purchase will have become disadvantageous to them. A market will be sought where the material may be purchased with the manufactured article.—

We shall therefore be left to the home market, cherished so much at our expense, and not subjected to competition from any quarter, in which situation we may reasonably expect the usual consequences of dealing at the mercy of parties interested. There is no security in such a dependent and degraded condition, for the apprehension of interest will always prove stronger than the sense of justice, or dictate of liberality. We shall be forced to buy the manufactured article which we need, and sell the raw material on which rests all our hopes of profit, at the prices which others may prescribe without our being able to interpose any competition or restraint.—We shall be exposed to a double monopoly in the purchase and the sale. The most obvious, and indeed the only remedy which depends exclusively on us, is to commence manufacturing ourselves. We raise the raw material, and I believe we have the means to manufacture it to advantage. A portion of the slave population may thus be profitably employed, which at present are not efficient in the severe labours of the farm. Many who are now an expense to their proprietors, would prove to be useful operators in a manufacturing establishment. Employment would also be afforded to needy and indigent persons, who could not derive equal profit or convenience from ordinary labour. Cotton, and perhaps wool factories to a certain extent, would prove highly beneficial to all, while the present uncertain state of our affairs may continue; and even after the wisdom and justice of the country may have removed all cause of apprehension or complaint. They would afford to the grower of the raw material, the advantage of obtaining the manufactured article to the extent of his wants, by a direct and immediate exchange. There can be no hazard of ultimate loss by carrying manufactures to a certain extent, proportioned to the demands of the country. Encouragement will thus be given to the consumption of our staple in every thing to which the use of it may be adapted. Until we shall be able to resort to labour-saving methods of operation, domestic industry in the ordinary way, should be made to furnish our supplies, as much as possible. By this system, especially if aided by more simple and economical habits of living, we shall be enabled the better to struggle against the current of adversity with which we are threatened. If a fair price cannot be obtained for our staple in a crude state, our only recourse is to manufacture it, and send the surplus to the home and foreign markets. If manufactures are profitable to any, why may they not be made profitable to us, who have labour which we may advantageously employ in this way, and who can receive the raw material immediately from the grower, without the addition of any adventitious charge? I am inclined to believe it will be found in experience, that slave labour will prove extremely well adapted to manufactures. It can be perfectly commanded, and reliance upon it will be subject to fewer disappointments, than usually happen in the voluntary labour. There must be less embarrassing collision between the proprietors and the workmen, and several causes will combine to render the entire cost of the labour comparatively less. The tariff, indeed, forces us into manufactures before the country has progressed to that state at which they usually take their rise; but considering the circumstances of our peculiar situation, and the fluctuating incidents of that trade of which our staple composes the commodity, our being forced into early manufactures may not operate to our ultimate disadvantage. It will enable us to sell the raw material at a fair price, or to obtain a fair price for it, by converting it into manufactured articles. We shall become ourselves, in any case of necessity, the competitors of those who would otherwise have a monopoly in our trade. It will place us in an attitude, in which we can, without much inconvenience, advance or recede. The tariff, which threatens us with great embarrassment, cannot have the merit of proving beneficial to the great family of the Union. It forces us to enter into premature competition with those of our fellow citizens in other states, who, without manufactures, cannot increase greatly in population or wealth. Perhaps those who are in favour of the tariff, might be disposed to excuse us, even if we should not feel much solicitude in the success of their business, and indeed great concern seems not to have been manifested in a matter involving vital interests to us. Time, which tests all things, will soon discover the bearing of this measure. In the meanwhile we must not be wanting in energy, but use the means of self-preservation which lie within our reach. I would therefore respectfully recommend public encouragement to the manufacture

of cotton and woollen fabrics, by the loan of money, the taking of shares, a temporary bounty upon the operation, or by such other and more suitable methods as the wisdom of the General Assembly may devise. By this, and the other expedients proposed, we shall do for our own preservation, every thing which depends exclusively upon ourselves. We have a right to expect, when we can justly claim it, a favourable interposition on the part of the government of the United States. If the measure can be shown to be unjust, unequal, oppressive, impolitic, unconstitutional; if it increases the prosperity of a portion of our citizens, by a correspondent subduction from the labour of others; if it arrays manufactures against the agriculture of any portion of the country, when they ought to proceed in harmonious and auxiliary co-operation; if it will subject the industry of one part, to the arbitrary and interested arbitrament of another; if it will exclude from a profitable intercourse with other countries, by committing to the discretion of a monopoly in our own; if it will disturb the harmony of the Union, by alarming the necessary and patriotic sentiments of self preservation; if it will weaken the conviction that the common government cannot cease to be equal, just, and paternal; if it will soon bring the exciseman, or gatherer of direct taxes to every door; if it will lessen the confidence of safety which is felt under the ægis of the Federal Constitution; if it be the only productive of a portion of these or other evils; or if the honest apprehension of them be such as no force of reasoning can remove, we have a right to expect a speedy interposition from the justice and policy of the government of the United States. These subjects furnish abundant materials for a free but temperate memorial to Congress, and impose a duty which the representatives of the people will not be inclined to omit. It is our privilege to speak out our grievances, and it is the duty of the General Government to hear and redress them. With regard to the principles involved in the Tariff, both of constitutional law and sound policy, we may doubtless with safety confide in the ordinary means of redress under the constitution. There cannot be cause to fear that the representative principle will prove insufficient to obtain all just rights in such cases, and a reliance on the moral and political justice of the Union, ought not to be easily shaken. An unwise measure, unequal, unjust, and unconstitutional, the frailty of man may occasionally suffer to pass; but can such a measure abide the touch of continual scrutiny, or can it continue to resist the influence of moral and political justice in the hearts of our brethren? Surely in our past experience, we have had no reason to conclude, that the moral integrity of the Union, which in fact constitutes our last and best hope, has become altogether extinguished; and that unrestrained selfishness, in violation of every principle of moral and political honesty, is permitted, or will be permitted to continue to influence the measures of government. Although this erroneous impression is far from us, and from our sister states alike affected, still we claim a dispassionate exposition of error, and would submit temperate remonstrance when our rights or interests are injuriously affected. In a review of the course here recommended, we cannot be blamed by our fellow citizens for taking care of ourselves; it cannot be strange that we should remonstrate, and seek to repeal a measure which is, as we conceive, injurious to all, and we cannot but obtain the approbation of all wise and good men, when we do all this in a way not to disturb the harmony of the Union, or occasion mutual distrust and exacerbation inconsistent with the liberal prosecution of our common affairs. If the harmony of the Union should be subjected to temporary interruption, a thing which is designed by none, and which the good sense of the nation would not easily permit, let it ever be the boast of Alabama, that neither in manner, or in matter, did she contribute to it.

In connection with other means to advance the prosperity of the State, our attention is called to the munificent donation obtained from the Congress of the United States, of 400,000 acres of land, designed to open a canal around the obstruction of the Tennessee River, at the Muscle Shoals, and to improve by the balance, if any should remain, the other rivers of the State. We are greatly indebted to the zeal and ability of our Representatives, and to the liberal sentiments which actuated the Congress of the United States. The work will prove highly interesting to the Union, as well as to the people of this State, and of the States adjacent. It remains with us to make the most judicious application of it, to accomplish at an early and given

period its principal object, and to economize it with such care as to carry its benefits to the greatest possible extent. It is most obvious good policy, and is consonant with the present improved maxims of political economy, not to suffer any public fund to perish in its first application, but as much as possible to operate upon its proceeds, and save the principal as a source of perpetual benefit. In the present instance if this can be done, and at the same time comply with all the requisitions annexed to the gift, incalculable advantages may be secured to the State, in other valuable improvements extensive and general. The gift will be enhanced in its value in a ratio great and unknown. The various methods of accomplishing the work may be reduced to the three following, viz:—By letting it out in convenient sections, upon previous estimate, to the lowest or to an approved bidder—by hiring hands to effect it under public superintendence, or by purchasing hands to labour in the service of the State. The comparative eligibility of these three methods may be estimated by the time required, the goodness of the work when done, and the expense of its final completion. It may not be amiss to consider briefly the objections to which each method is liable. The first would be liable to loss from the imperfection of estimates, as no prudent man, either with or without experience in such operations, would be inclined to make a close contract, where many uncertainties prevailed. In a bad or inferior contract under this method, the work would be executed in the cheapest and most imperfect manner, which the vigilance of the superintendant would permit; and it is scarcely possible in such cases to be so vigilant as to defeat the multiform subterfuges and expedients which self interest will devise. Should any contract prove confessedly a bad one, importunate application would be made for exaggerated further allowance. The superintendence would be more difficult, for the most perfect contracts admit of difference of opinion, in which the individual contractor would generally gain the advantage of the public agent. Time, in some instances, and money too, might be lost by a refusal to go on with a contract. It is unnecessary here to be more particular, for it is evident that this method is liable to loss of money and of time, being also unfavourable to the most perfect execution of the work.

The second method would indeed be favourable to the proper accomplishment of the work, but unfavourable in point of expense and of time. There would always be uncertainty in procuring hands, and those who had hands to hire, might take occasion from the public necessity, to hold back and combine so as to enhance the price. There would be more difficulty in the management of the hands, as proprietors might be unreasonable in their expectation of the treatment which they should receive, and the quantity of work daily required of them. In our peculiar situation the third method seems to combine the three essential advantages. Hands it is presumed may readily be purchased at a reasonable price, and from time to time, to the full extent of our disposable means, and sufficient to accomplish the work within the time prescribed in the donation. In this way the work would only cost the interest on the money invested; the loss sustained on the property by death or casualty, the subsistence of the hands, and the charges of superintendence.—The work would be accomplished without any difficulty in its details, and with just reference to its durability and usefulness. With the effective hands, it might be convenient to purchase a suitable number of women, to cook, wash, and perhaps perform the lighter parts of the work, and this would be perfectly consistent with the humanity of purchasing men with their wives, whenever such opportunities of purchase might offer. Their working implements and clothing should be purchased to the best advantage, a good physician employed to attend them in sickness, with ample hospital stores, and such means of comfort as the sick might require.—At suitable places along the canal, the hands might cultivate without much expense or loss of time, the vegetables which would be proper to promote their comfort, and the preservation of their health. It might be so arranged that they could work on the canal during the sickly season, at points least exposed to sickness or fatality. It is supposed that in this way, the work might be accomplished in due time, and a large proportion of the fund be preserved for future operations, extending their benefits to every part of the State. This corps of pioneers, organized and instructed in the operations of the canal, might afterwards be employed on Rail Roads, Turnpikes,

pike roads, improving the navigation of our rivers, and opening other canals where the public good might require. The State would have the means to perpetuate this corps, as long as its operations would prove useful to the community. In this mode of husbanding the public resources which have fallen into our hands, it is not visionary to suppose, that much public good, exceeding perhaps the present computation of any one, might be ultimately effected; and it cannot but delight the patriot, to contemplate benefits extending to all, connecting the whole in affection and interest, and improving the common property to produce the greatest amount of common good. Calculations will be made in another part of this communication, and will be seen more fully in the exhibits which will accompany it. But here a proper place is offered for general remarks which have an important bearing on this subject. It will long continue more or less doubtful what sum may be necessary to open the Tennessee Canal, adapted to the passage of Steam Boats, and indeed whether the entire donation will be competent to effect it, without resorting to expedients to make the funds as effective as possible. This furnishes an argument in favour of the recommendation which is made. If the fund should prove inadequate, it may be much more easy to obtain additional time, than an additional donation. It is very uncertain, from present indications, what changes a few years may produce in the policy of the Government on subjects of this nature. It will therefore be wise to adopt such a course, as will make the donation at least adequate in its principle object, if it cannot be made to effect more. We are required by the act of Congress to apply the proceeds of the donation to the objects only for which it was made. This will be faithfully done when we resort to suitable expedients to give it the greatest possible effect in the accomplishment of those objects alone. We are not required to spend it without contrivance or economy. The donation contemplates more objects than one; we fulfil its design when we arrange for the accomplishment of all, if that should happen to be in our power.

The best manner of disposing of the Lands, so as to render available the amount of the donation, requires a careful and deliberate inquiry. It is desirable to dispose of the Lands giving due attention to the public interest, and the peculiar situation of our citizens who now reside on them. They were not exempt from the extraordinary mania which led us to place an enormous value on good Lands in this State, and to purchase at prices so high, that a period of sober reflection and better experience, as well as inability to pay, led to very extensive relinquishment under the humane acts of Congress which were passed for our relief. They had expectation of further relief from the General Government in the repurchase of their land, and now when that relief can be no longer contemplated, they are entitled to a measure of justice and generosity from the State.—It is wrong therefore to say that the land should be made to bring as much as it can. It is sufficient that it be made to bring a fair and equitable price assessed upon its real & intrinsic value. The quantity of relinquished land, in the six counties enumerated in the act of Congress, is 497,219 acres. Out of this quantity we are entitled to 400,000 acres. Congress has not reserved to the Government the right of designation, nor provided expressly by whom it should be made, but has permitted us to take in those counties 400,000 acres, if there be so much in them, and if not, the balance we are authorised to take in Jackson county. Had we had occasion to go to Jackson county, we should evidently have had the right of selection there. If the quantity in the six counties had been precisely 400,000 acres, we should have been obliged to have taken the whole of it, in satisfaction of the donation given, and there would have been no room for selection.

But as the quantity is 497,219 acres, and as 400,000 acres of them have been given to us, without any restriction, and without reservation of right on the part of the Government to declare what particular part shall constitute the donation given to us, it is a matter of necessary and inevitable implication, that we have the right to make the selection ourselves, confining it within the bounds prescribed by the act. We have an undeniable right to receive the gift, precisely on the terms on which it was given. So much for the legal construction of the Act of Congress. Plans for the disposal of this land, and the application of the proceeds, will probably be submitted, more judicious than any I may have been able to devise; but I regard it my public duty to submit something on this subject to the consideration of the General

**Assembly.** I would therefore recommend, that commissioners be appointed to select the quantity of land to which we are entitled, and at the time of the selection to assess its fair and equitable value. That the land shall be brought into market as soon as the proper arrangements can be made, at the assessed price as the minimum for which it shall be sold.—That the actual settler, or rightful occupant shall be entitled to a preference, at the assessed value, in the purchase of a quantity sufficient to make him a reasonable settlement, comprising his improvements as much as possible, say not exceeding 320 acres, and his preference to avail him no farther. That one fourth of the purchase money shall be required to be paid down, and the balance in eight equal annual instalments, each instalment bearing an interest of six per centum per annum, from the day of the sale. That suitable provision be made to secure punctuality in payment, and that the purchaser shall have the option to pay the whole or any part not due, at any time he may find it convenient. Should the outlines of this plan meet your approbation, your wisdom will devise all the necessary details. If it be thought objectionable that a preference should be given to any one, let it be recollected that it is at the assessed value, and only to such a quantity as will secure to him a home, where he may long have exerted his labor, and from which he would be unwilling to remove, and from which indeed, if he gives the value, the humanity of the State ought not to permit him to be removed. Can the State desire more from any citizen in the purchase of his home, than its real value estimated by commissioners acting under every solemnity? But after having purchased his home, if any one should choose to accumulate an estate in land, let him come freely into the market with others, at the assessed price as a minimum; for all further purchase is matter of speculation, and may be left to the competition of a public sale. All that is not taken up under the preference, may freely come into market at public auction. And here I beg leave to observe, that as the lands must be selected, there will be no inconvenience in the assessment of their value and such an assessment will be far preferable to an arbitrary minimum by classification. The purchaser may be content to give the assessed price, as the money which he pays will be applied to render his purchase more valuable. But the most difficult part of this subject remains to be considered, I mean the best and most economical application of the money to accomplish the objects to which it is devoted. I beg leave to submit the result of an anxious and mature deliberation, which however may prove to be erroneous, but the fallacy of which I have not been able to detect. I consider it probable that the 400,000 acres will sell at an average of five dollars per acre, and will realize the amount of two millions of dollars. It is impossible to be accurate, but I give my views of the application of the fund on the above data, and it cannot be material to the principle whether the sum be greater or less. The plan itself too may admit of suitable modifications, if the principle of it should be approved. I suppose at the first sale, we might receive 500,000 dolls. as the fourth of the purchase money required to be paid down. Of this sum, \$225,000 might be laid out in the purchase of 500 able bodied slaves to work on the canal. Fifty thousand dollars should be retained in hand, for the purchase of working implements, and to defray the charges of subsistence and superintendence. The remaining sum of \$225,000 might be vested in the establishment of an Office of Discount and Deposit of the State Bank, to be located at some convenient point in the Tennessee Valley. This institution might be made to operate on the safest and most secure principles of Banking. The notes for the eight annual instalments might be deposited in this office and there made payable. The money retained in hand might be deposited there for the payment of demands against the canal.—It will be necessary in any event to create an agency for the registry of the lands, and the preservation of the money and notes, all which might be conveniently transacted at the office. At the commencement of the second year, the profits of the office at 8 per cent. would be \$1,800, and the interest on the first annual instalment would be \$11,250, making an aggregate of \$29,250, equal to the current expenses of the second year. Of the principal of the first annual instalment, say \$187,500, there might be vested as capital of the office \$87,500, which would make its capital for the second year, three hundred and twelve thousand five hundred dollars, and the balance of 100,000 dollars, might be applied to the purchase of 250 slaves. At the end of the second year the profits of the office would be \$25,000,

and the interest of the second annual instalment would be 22,500, making an aggregate of \$47,500, equal to the current expences of the third year. Of the principal of the 2d annual instalment there might be vested \$87,500, as capital of the office, which would make its capital for the 3rd year \$400,000, and the balance of \$100,000 in the purchase of 250 slaves. At the end of the 3rd year the profits of the office would be \$32,000, the interest of the third annual instalment of 33,750, making an aggregate of \$65,000, equal to the expenses of the fourth year. The principal of the third annual instalment might be entirely vested in the purchase of 460 slaves, and the increase of the capital of the office discontinued. At the end of the fourth year, the profits of the office would be \$32,000 and the interest on the fourth annual instalment would be \$45,000, making an aggregate of \$77,000, equal to the current expenses of the 5th year. The principal of the fourth annual instalment might be vested in the purchase of 460 slaves. At the end of the fifth year the profits of the office would be \$32,000, the interest on the fifth annual instalment would be \$56,250, making an aggregate of \$86,250 equal to the current expenses of the sixth year. The principal of the 5th annual instalment might be laid out in the purchase of 460 additional slaves. This calculation will be seen fully carried out in exhibit marked A. from which it will appear, that at the end of the 8th year, the laboring force on the Canal might be upwards of 3,300 hands, and the principal of the eighth annual instalment of \$187,500 remaining still in hand for the purchase of more, or any other application. It will be seen from exhibit marked [B] that the annual profit of the office, and the interest on the instalments will be sufficient for the current annual expenditures. I have heretofore mentioned, that this calculation was mainly intended to manifest and develop the principles of the operation. The sum received at the 1st sale may not exceed 3-4 or perhaps 1-2 of \$500,000 and the result will only justify a proportionate amount of effect; still very good provisions would seem to be made for the accomplishment of the Canal, and every succeeding year, by further sales, would make the actual state of the business approximate more nearly to the hypothetical calculation. The evident design of this scheme is to ensure the accomplishment of the objects of the donation by the mode of applying it and to save as much as possible the principal of the donation itself, that it might be afterwards applied to the performance of other objects of deep and lasting interests to the community in every part of the State. It seems to be susceptible of easy and faithful execution, and for any thing that can now be apprehended, the result promises to be inevitable. It is difficult to ascertain what quantity of such work a given number of hands may be able to perform in a given time; if however we should be urged by the time prescribed in the donation, other resources of the State devoted to similar objects, might be made to afford temporary aid to this fund, which would soon again be in a condition to reimburse it. No doubt if we should desire it, additional time would readily be given, when there could be no apprehension of the full and final completion of the work. It is but just to remark, that there will be labor on the canal which the ordinary hands will not be able to perform, although it will be an easy matter to procure many mechanics among them, and that horses, carts, and labor saving fixtures, will occasion additional charges. This cannot substantially affect the calculation, for as much as will be taken from it in money for these purposes, will in effect be added to it in the execution of the work. It is highly desirable that the work should be performed in a short time; the scheme proposed is conceived to be favorable to this object, while it ensures its completion by the fund devoted to it, and the completion of other works which might render it doubly valuable. If this fund can be economized and preserved, and made to operate in conjunction with our other means, we may have the gratification at no very remote period, of seeing all the rivers of the State improved, and the markets of Mobile and New-Orleans alike opened to the fertile and extensive Valley of the Tennessee River. Even along the route of the canal, rail roads, or turnpike roads, and means of easy communication with it, would prove of essential advantage, and extend its benefits in a more equable manner.—Should the General Assembly not think it expedient to vest any portion of the money in an office of Discount and Deposit, I would beg leave to recommend the purchase of hands with the money, as it will be from time to time received, reserving only a sufficient sum to meet the current expenses. This mode although not productive of



equal economy and convenience, will still accomplish the work, and eventuate in a great saving of the principal fund. The letting out of the work in sections will entirely consume the capital so far as those contracts are made. The hiring of hands will be equally destructive of the capital, and leave it uncertain whether the fund will prove sufficient. The deficiency of the fund would involve us in new and troublesome uncertainties. It may be hard to obtain, what by proper economy we may avoid the necessity of seeking. This subject is submitted to your wisdom and patriotism, with a confidence entire and unlimited, and with a solicitude which it would be culpable not to feel.

The length to which the present communication has already been drawn, inclines me to reserve for early & future attention some important subjects which were intended to be included in this communication. You will perceive by the report of John Elliott, Esq. Solicitor of the 1st Judicial Circuit, which I have the pleasure herewith to transmit; that in the proceedings against the Tombeckbee Bank, a judgment has been entered, *pro forma*, in favour of the Bank, that the subject of controversy might come up for adjudication before the Supreme Court of the State.

This cause will probably be determined at the next Session of the court. Messrs. Bagby and Salle, were employed as counsel assistant to the Solicitor. I submit to the liberality of the General Assembly, whether the services of the Solicitor do not entitle him in this case, to special remuneration independent of the salary attached to his office.

In the case of the State, against the corporation, styled "the St. Stephens' Steam Boat Company," I employed the Honorable Enoch Parsons as counsel assistant to the Attorney General, before the Supreme Court. The decision was against the corporation, and it has ceased, I believe, to exercise or claim any Banking privileges. I have not before me the report of the Attorney General, or of the assistant counsel. — When they are received, they will be immediately laid before you. I have the pleasure to announce to you that the buildings of the University of Alabama have been commenced. The board of Trustees, in March last, selected the site of the Institution, on a quarter section of University land, adjacent to, and eastward of the town of Tuscaloosa. The contracts for a portion of the buildings, have been made on very favorable terms. Materials of an excellent description are found in great abundance convenient to the site of the Institution. All the auspices under which this most interesting Seminary commences, seem to be very propitious. Let us indulge the hope, and let all proper measures be taken to realize it, that the light which it will diffuse, will contribute to the glory and security of the people by whom it is cherished, and to whose general benefit, all its arrangements will be directed.

The loan of \$100,000, authorized to be obtained for the State has not been negotiated. An extraordinary pressure in the money market, from causes known to the public, and fully developed in the reports of the agents, has prevented the negotiation. In a few days, when the reports, in part recently received, have been more fully prepared, they will be speedily submitted to you. Notices have been given to this Department, that the elections of Sheriffs, in the counties of Monroe, Autauga and Marengo, would be contested. In the county of Monroe, the candidate having the highest number of votes, under peculiar circumstances, which will be submitted to you if the contest is continued, received a commission, reserving the question still for your consideration, should the party incline to make it before you. — In the county of Autauga, the Coroner acts as Sheriff, until it is determined to whom the commission ought of right to issue, or whether a new election shall take place. In the county of Marengo, the Coroner being one of the two highest candidates, a special appointment was made to continue until your Hon. body might decide upon the election. It seems that no special provision is made for the trial and decision of such controversies. As it would be doing great violence to suppose that no means were provided, and no power competent to guard the purity of the elections of Sheriffs, or to obviate the consequences of misconduct or corruption in the management of them, I was led to look for the remedy in the plenary powers of the General Assembly. If the General Assembly is vested with power to decide, of which I could not doubt, it became necessary to provide for the public service, until the decision should be made. The temporary appointment was given, relying more on necessity than any express



provision of law for its validity and justification. Perhaps the necessity may not render it valid, and I beg leave to invite your attention, at an early period, to this subject, that the public service may be provided for as you in your wisdom may direct. I cannot close this communication without the expression of a devout and fervent wish, that your deliberations may be conducted with wisdom and harmony, that the measures, which you may adopt, may prove a source of consolatory reflection to yourselves, and meet the fullest approbation of your country.

JOHN MURPHY.

#### EXHIBIT [A]

Amount supposed to be received at the first sale,	\$500,000
Vested as Capital of office Discount and Deposit,	\$225,000
Vested in the purchase of 500 slaves,	225,000
Retained in hand for expenditures 1st year,	50,000
	<hr/>
	500,000

The annual instalments will be 187,500 dollars, being the 8th part of 1,500,000 dollars. The capital of the office 1st year, 225,000, 2d year, 312,500, 3rd year, 400,000.

And increase of it discontinued. Profit of Office at 8 per cent, and interest on 1st Instalment, 1st year, 29,250, 2d year, 47,500, 3d year, 65,750, 4th year, 77,000, 5th year, 88,250, 6th year, 99,500, 7th year, 110,750, 8th year, 122,000.

Profit of the Office and interest of 1st instalment provided for the current expenses of the 2d year, the first being provided for out of the capital, viz: 2d year, 29,250, 3d year, 47,500, 4th year, 65,750, 5th year, 77,000, 6th year, 88,250, 7th year, 99,500, 8th year, 110,750, 9th year, 122,000.

When the interest of the instalments will cease, and there will remain in hand the principal of the last instalment, 187,500 dollars.

Labourers working on the canal at the end of the 1st year, 500, 2d year, 750, 3d year, 1,000, 4th year, 1,460, 5th year, 1,920, 6th year, 2,380, 7th year, 2,840, 8th year, 3,300.

#### EXHIBIT [B]

##### *Estimated expense of the second year of operations,*

750 hands at \$25 for clothing and subsistence,	\$18,750
5 overseers, at 400 dollars each,	2,000
Chief Engineer,	2,500
Assistant Engineer,	1,000
Physician, \$1,200:—Assistant \$500,	1,700
Commissary 1,000 dollars:—Assistant 300 dollars,	1,300
Hospital Stores,	500
Subsistence and contingencies,	3,000
	<hr/>
	\$30,750

Provision for the current expenses of the 2d year by profits of the office, and interest on the instalment,

\$29,250

Deficit for the second year,

1,500

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\$30,750

This deficit will occur only the second year. In every future year the aggregate of profits of the Bank, and the interest of the instalment for that year, will exceed the current expenditures, which excess may pay the charges of superintending Commissioners, or a Board of Public works, so far as there may be occasion for them.

Wednesday, Nov. 19th, 1828.

The Senate met pursuant to adjournment.

In pursuance of an order of the Senate, Mr President reported the following standing committees, to wit:

A committee of Propositions and Grievances; to consist of messrs McVay, Skinner, Conner, Smith, Picket and Garth.

A joint committee on Enrolled Bills; to consist of messrs Moore of Jackson, Powell and Crawford.

A Judiciary committee; to consist of messrs Perry, Garth, Hubbard. Moore of J. and Powell.

A committee on Privileges and Elections; to consist of messrs Watkins, Wood, Irvin, Smith and Conner.

A committee on Inland Navigation; to consist of messrs Walthall, Watkins, Evans, Wood and Moore of Marion.

A committee on Roads, Bridges and Ferries; to consist of messrs Merrewether, Skinner, Conner, Perry and Smith.

A committee on County Boundaries; to consist of messrs Abercrombie, Powell, Crawford, Moore of Marion and Merrewether.

A committee on Accounts and Claims; to consist of messrs Vining, Watkins, Abercrombie, Evans and McVay.

A committee on Schools and Colleges, and School and College Lands; to consist of messrs Powell, Ross, Crawford, Hubbard, and Merrewether.

A committee on the State Bank; to consist of messrs Ross, Garth, Vining, Perry and Watkins.

A military committee; to consist of messrs Irvin, Wood, Skinner, Picket and Abercrombie.

A committee on Divorce and Alimony; to consist of messrs Garth, Vining, Irvin, Moore of Mar. and Walthall.

A committee on the State Capitol; to consist of messrs Hubbard, McVay, Ross, Moore of J. and Walthall.

*Mr* Moore of Jackson, presented the memorial of John E. Anderson of Marengo county, upon the subject of a contest in the election for Sheriff of said county; which was read and referred to the committee on the judiciary, to consider and report thereon.

*Mr* Perry presented the petition of Middleton G. Woods, a minor, praying the passage of a law authorising him to manage his own estate; which was read. *Mr* Perry also introduced a bill to be entitled an act to authorise Middleton G. Woods, to manage his own estate; which was read the first and second time and referred to the committee on the judiciary to consider and report thereon.

*Mr* McVay presented the petition of Henry Garrard, tax collector of Lauderdale county, in the year 1824, praying indemnity for expenses incurred in defending a suit instituted against him for selling certain property, as tax collector, belonging to a merchant in Florence; which was read and referred to the committee on propositions and grievances, to consider and report thereon.

A message from the House of Representatives, by *Mr* Ready: *Mr* President—The House of Representatives have adopted the following resolution, in which they desire your concurrence: *Resolved*, that a committee, to consist of three members, be appointed on the part of this House to act with such committee as may be appointed on the part of the Senate, to frame such joint rules as may be necessary for the government of the two Houses. They have appointed on their part messrs Walker of Mad. Terry and Perkins. Ordered that the resolution lie on the table.

*Mr* McVay presented the petition of sundry inhabitants of Lauderdale county, upon the subject of a public road in said county; which were referred to the committee on roads, bridges and ferries to consider and report thereon.

*Mr* Hubbard introduced a bill to be entitled an act explaining the true intent and meaning of two acts therein named; which was read and ordered to second reading to-morrow.

*Mr* Hubbard also introduced a bill to be entitled an act concerning penal statutes; which was read and ordered to a second reading to-morrow.

Mr McVay offered the following resolution: *Resolved*, That, with the concurrence of the House of Representatives, the Senate will convene in the Representative Hall on Saturday next at three o'clock, for the purpose of electing a Senator to the Congress of the United States for the term of six years from and after the expiration of the present term of service of the Hon. W. R. King; also, a State Printer. Mr Ross moved to amend the resolution by adding "a Secretary of State, Comptroller and Treasurer," so as to elect those officers at the same time, which was carried. The resolution as amended was then adopted. Ordered, that the Secretary acquaint the House of Representatives therewith.

Mr Garth offered the following resolution: *Resolved*, That a committee be appointed to act jointly with a committee of the House of Representatives to report rules for the government of each House in interchanging messages, the manner of conducting a joint vote of the two Houses of the General Assembly, and regulating committees of conference; which was adopted; whereupon messrs Garth, Ross and McVay were appointed on the part of the Senate. Ordered, that the Secretary acquaint the House of Representatives therewith.

On motion of Mr Irvin, *Resolved*, That a standing committee be appointed on the State Printing—whereupon messrs Crawford, Irvin and Picket were appointed.

Mr Moore of Jackson presented the memorial of Grantland and Robinson, late printers to the State, praying additional compensation for their services as public printers; which was read and referred to the committee on propositions and grievances.

On motion of Mr Powell, the message of the Governor of the 18th inst. was taken up. Ordered, that it be committed to a committee of the whole House, and made the order of the day for to-morrow.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Thursday, November 20th, 1828.*

The Senate met pursuant to adjournment.

On motion of Mr Hubbard, the Senate resolved itself into a committee of the whole house on the Governor's message, Mr McVay in the chair, and after some time spent in the consideration thereof, the committee rose, Mr President resumed the chair, and Mr McVay reported, that the Senate, in committee of the whole, had had the Governor's message under consideration, and had adopted the following resolutions, which he was instructed to report to the Senate, to wit:

1. *Resolved*, That so much of the Governor's message as relates to the Tariff, be referred to a special committee.

2. *Resolved*, That so much of the Governor's message as relates to the donation of public lands, made by the government of the United States to the state of Alabama, for the purpose of removing the obstruction to the navigation of certain rivers, be referred to a special committee, and that fifty copies of the act of Congress, making such donation, be printed for the use of the Senate.

3. *Resolved*, That so much of the Governor's message as relates to the University of the State of Alabama, be referred to the committee on Schools and Colleges, and School and College Lands.

4. *Resolved*, That so much of the Governor's message as relates to the Tombeckbe Bank and the St. Stephens Steam Boat Company, and the report of John Elliott, Esq. be referred to the judiciary committee.

5. *Resolved*, That so much of the Governor's message as relates to the contested elections of sheriffs, be referred to the judiciary committee.

All of which were adopted.

Aggreeably to the first resolution *Mr President* appointed a special committee to consist of messrs Ross, Perry, Garth, Pickett and Moore of Jackson.

According to the second resolution, *Mr President* appointed a special committee to consist of messrs Hubbard, Watkins, Ross, Merriwether, Garth, Wood and Skinner.

*Mr Powell* obtained leave to introduce a bill to be entitled an act to require the Governor to reside at the Seat of Government, which was read a first time and *ordered* to a second reading to-morrow.

On motion of *Mr Moore* of Jackson, *Resolved*, That Thomas B. Grantland, editor of the Alabama Sentinel, and his assistant *Mr W. Moody*, be admitted within the bar of the Senate to take notes of the proceedings for the use of their paper.

*Mr Pickett* presented the petition of Lewis Tyus, executor of Baxter Smith, deceased, praying authority to emancipate certain slaves, which was read and *referred* to the judiciary committee.

*Mr Pickett* also obtained leave to introduce a bill to be entitled an act to authorize Lewis Tyus of Autauga county to emancipate certain slaves therein named, which was read a first and second time forthwith, and *referred* to the judiciary committee to consider and report thereon.

The following message from the House of Representatives was received by *Mr Tunstall*, their clerk: *Mr President*, the House of Representatives concur in the resolution of your honorable body, appointing a committee to procure stationary and fuel for the use of the General Assembly, during the present session: They have appointed on their part messrs Whitfield and Welborn. They also concur in the resolution from the Senate appointing a committee, to act jointly with a committee of the House of Representatives, to report rules for the government of each House in interchanging messages, the manner of conducting a joint vote of the two Houses of the General Assembly, and regulating committees of conference; and have appointed messrs Walker of Madison, Terry, and Perkins, said committee.

On motion of *Mr Conner*, *Resolved*, that the judiciary committee be instructed to inquire into the propriety of passing some general law regulating and prescribing the mode of contesting the elections of sheriffs, clerks of the circuit and county courts, and assessors and tax collectors, and that they report by bill or otherwise.

On motion of *Mr Smith*, *Resolved*, that the Secretary of State be instructed to furnish to the Senate an abstract of all the returns of the votes from the different counties in this state, relative to the proposed amendment of the constitution of this state, and that the Secretary of the Senate inform the Secretary of State thereof.

*Mr Garth* obtained leave to introduce a bill to be entitled an act to amend an act to authorize the sale of the sixteenth sections and for other purposes; which was read and *ordered* to a second reading on to-morrow.

On motion of *Mr Ross*, *Ordered*, that the Secretary of the Senate, *Mr Lyon*, have leave of absence from the Senate until next week.

On motion of *Mr Smith*, *Resolved*, that a special committee be appointed to memorialize the Congress of the United States, on the subject of the publiclands within the limits of the state of Alabama, so as to reduce the price of the same and to give to actual settlers preemption and donation titles, to constitute which committee *Mr President* nominated messrs Smith, Hubbard, Crawford, Moore of M. McVay, Ahercrombie and Irwin. And then the Senate adjourned till tomorrow morning at 10 o'clock.

Friday, November 21, 1828.

The Senate met pursuant to adjournment.

Mr Vining presented the petition of Wm. Smith praying his farm near Huntsville to be excluded the corporate limits of said town, which was read and laid on the table.

Mr Merrewether presented the petition of the executors, widow and legatees of Joshua Roden, praying authority to sell certain real estate in lieu of personal, which was read and referred to a special committee, to consist of messrs Merrewether, Powell and Watkins.

Mr Irwin presented the petition of sundry inhabitants of Henry county, praying that John Bolksum be restored to the privileges of citizenship, which was read and referred to the committee on propositions and grievances to consider and report thereon.

Mr Perry, of the Judiciary committee to which it had been referred, reported without amendment a bill to be entitled an act to authorize Lewis Tyus of Autauga county, to emancipate certain slaves therein named, which was ordered to be engrossed and read a third time on tomorrow.

Mr Perry of the same committee to which it had been referred, reported without amendment a bill to be entitled an act to authorize Middleton G. Woods, a minor, to manage his own estate, which was ordered to lie on the table.

Mr Powell presented the annual report of the President of the Bank of the State of Alabama, which was read and is as follows:

*Bank of the State of Alabama, Tuscaloosa, November 19, 1828.*

The honorable, the President and Members of the Senate

Gentlemen—Agreeably to the provisions of the 12th section of an act entitled an act to establish the Bank of the State of Alabama, I have the honor of laying before your honorable body, the following statement, to wit:

Capital stock of the bank. \$409,853 32½; notes in circulation 395,944; money on deposit 77,623 11½.

Debts due the Bank 628,747 50; property real and personal 13,868 98; Cash, including bills of Exchange and amount due by other Banks, 294,521 72.

For your further information, I beg leave to communicate the accompanying document, which exhibits the operations of this institution for the last 12 months ending the 9th instant; and also a statement shewing the profits of the bank in each year since its establishment. All of which, it is hoped, will prove satisfactory. Respectfully submitted by order of the board.

BENJAMIN B. FONTAINE, *President.*

Ordered, That the foregoing report and accompanying document lie on the table, and that two hundred copies thereof be printed for the use of the Senate.

Mr Garth, of the special joint committee appointed to report rules for the government of the two houses of the General Assembly, in interchanging messages, conducting joint votes of the two houses, and regulating committees of conference, reported five rules, which were read and concurred in by the Senate. Ordered, That the House of Representatives be informed thereof.

On motion of Mr McVay, Resolved, That the committee on the judiciary, be instructed to inquire into the expediency of so amending the constitution, that there be biennial, instead of annual sessions of the General Assembly, with leave to report by resolution or otherwise. On motion of Mr Powell, Resolved, That the Senate will on Saturday, the

22d inst. at the hour of 11 o'clock, A. M. proceed to the election of a committee on the part of the Senate, to act with such committee as may be elected by the House of Representatives, for the purpose of examining into the condition of the Bank of the state of Alabama, pursuant to the provisions of an act, entitled an act to amend the charter of the bank of the state of Alabama; and that the House of Representatives be informed thereof.

Mr. Crawford moved the following Resolution: *Resolved*, That with the concurrence of the House of Representatives, the Senate will convene in the Hall of the House of Representatives, on Tuesday next at 3 o'clock, P. M. for the purpose of electing a state printer for the ensuing year, and that the House of Representatives, be informed thereof; which was ordered to lie on the table till Monday next.

On motion of Mr. Garth, *Resolved*, That the committee on the public printing, enquire the reasons why the laws and journals were not distributed in due time, and according to law, and that they have leave to report by bill or otherwise.

A bill to be entitled, an act explaining the true intent and meaning of two acts therein named, "was read a second time and *referred* to the judiciary committee, to consider and report thereon.

A bill to be entitled an act concerning penal statutes, was read a second time, and *ordered* to be engrossed and read a third time on to-morrow.

A bill to be entitled an act to amend an act, to authorize the sale of 16th sections and for other purposes, was read a second time, and on motion of Mr Crawford, was *referred* to the judiciary committee, with instructions to inquire into the expediency of authorizing the commissioners of school lands to maintain actions of trespass.

A bill to be entitled an act to require the Governor to reside at the seat of government, "was read a second time and, on motion of Mr Smith, *ordered* to lie on the table until Wednesday next. And then the Senate adjourned until to-morrow morning at 10 o'clock.

*Saturday, November 22, 1828.*

The Senate met pursuant to adjournment.

Mr McVay from the committee on propositions and grievances, reported a bill to be entitled an act for the relief of Henry Garrard, which was read and *ordered* to a second reading on Monday next.

Mr. McVay from the same committee, to whom had been referred the petition of Grantland and Robertson, reported the prayer of the petitioners unreasonable, and that it ought not to be granted, which report, on motion of Mr Powell, was *ordered* to lie on the table.

Mr. McVay presented a transcript from the orders of the commissioners court of Lauderdale county, relating to Snoddy's ferry on Elk River, which was read and *referred* to the committee on roads, bridges and ferries.

Mr Abercrombie presented the account of Samuel Dennis, jailer, of Montgomery county, which was *referred* to the committee on accounts and claims for their consideration.

On motion of Mr Picket, the following preamble and resolution was adopted, to wit:" Whereas experience has demonstrated, that it is impracticable, to obtain an impartial jury for the trial of capital offenders, where such offence has been committed under aggravated circumstances; and whereas it is essential to the good order of society, that offenders of this grade should be speedily brought to condign punishment: Be it,

therefore *resolved*, That the judiciary committee be instructed to take the subject under consideration, and report by bill or otherwise.

On motion of *Mr Perry*, *Resolved*, That the judiciary committee be instructed to inquire into the expediency of more effectually preventing Judges of the circuit courts from charging on matters of fact, and that they have leave to report by bill or otherwise:

*Mr. Abercrombie* introduced a bill to be entitled an act to prevent persons being sued in civil cases before justices of the peace, out of the company beat in which they permanently reside which was read and *ordered* to a second reading on Monday next.

*Mr. Irwin* presented the annual report of the comptroller of public accounts, shewing the disbursements from the contingent fund for the last twelve months, which was read and *ordered* to lie on the table.

*Mr Irwin* also presented the account of John McKimney of Dale county, which was *referred* to the committee on accounts and claims.

On motion of *Mr Powell*, the Senate, in pursuance of a resolution of yesterday, proceeded to the election of a committee, to act jointly with such committee as may be appointed by the House of Representatives, to examine into the situation of the State Bank, messrs, Watkins, Ross, Garth and Hubbard being in nomination.

For *Mr. Watkins*, there were 19 votes—Garth 13—Ross 13—Hubbard 13.

Those who voted for *Mr Watkins* are, *Mr President*, Abercrombie, Conner, Crawford, Garth, Hubbard, Irwin, Merriwether, Moore of J. Moore of M. M'Vay, Perry, Pickett, Powell, Ross, Skinner, Smith, Vining, and Walthall—19.

Those who voted for *Mr Garth* are, *Mr President*, Abercrombie, Conner, Crawford, Hubbard, Merriwether, Moore of J. Moore of M. M'Vay, Perry, Pickett, Powell, Ross, Skinner, Smith, Vining, Watkins, and Wood—18.

Those who voted for *Mr Ross* are, *Mr President*, Abercrombie, Conner, Crawford, Garth, Hubbard, Irwin, Perry, Powell, Vining, Walthall, Watkins, Wood—13.

Those who voted for *Mr Hubbard* are, Messrs Garth, Irwin, Merriwether, Moore of J. Moore of M. M'Vay, Pickett, Ross, Skinner, Smith, Walthall, Watkins and Wood—13.

*Mr President* then declared that Messrs Watkins and Garth were duly elected; and there being an equality of votes between Messrs Ross and Hubbard, the Senate proceeded to vote again for a third member of said Committee, Messrs Ross and Hubbard being in nomination. There were for *Mr Hubbard* 11 votes, for *Mr Ross* 10.

Those who voted for *Mr Hubbard* are, Messrs Garth, Irwin, Merriwether, Moore of J. Moore of M. M'Vay, Pickett, Ross, Skinner, Smith, and Wood—11.

Those who voted for *Mr Ross* are, *Mr President*, Abercrombie, Conner, Crawford, Hubbard, Perry, Powell, Vining, Walthall, and Watkins—10.

*Mr President* then declared *mr Hubbard* as duly elected third member of said committee.

Engrossed bills to be entitled, 1st, an act relating to penal statutes; 2d, an act to authorize Lewis Tyus, of Autauga county, to emancipate certain slaves therein named, were severally read the third time and passed the Senate. *Ordered*, that the titles thereof be as aforesaid, and that the same be sent to the House of Representatives for their concurrence.

*Mr President* laid before the Senate a communication from the secretary of state, containing an abstract of the returns made to his office, of the votes of the people of the several counties of this state, on the proposed amendment of the constitution of this state, made pursuant to a resolution of the Senate; which was read, and on motion of *Mr Smith*, said report was *ordered* to lie on the table till Saturday next.

And then the Senate adjourned till Monday morning, at 10 o'clock.

Monday, November 24, 1828.

The Senate met pursuant to adjournment.

Mr Perry, from the judiciary committee to which it had been referred, reported without amendment a bill to be entitled an act to explain the true intent and meaning of two acts therein named; which was ordered to be engrossed and read a third time on to-morrow.

Mr Merriwether, from the special committee to which had been referred the petition of the executor, widow and legatees of Joshua Roden, deceased, reported a bill to be entitled an act to authorize Peter G. Oldham, executor of the estate of Joshua Roden, deceased, to sell and transfer real estate; which was read and ordered to a second reading on to-morrow.

On motion of Mr Watkins, ordered that the credentials of the members of the Senate be referred to the committee on privileges and elections, to consider and report thereon.

Mr Smith offered the following resolution: *Resolved*, that a committee of three members be appointed on the part of the Senate, to act with such committee as may be appointed by the House of Representatives, to examine the returns of the votes of the citizens, given at the last general election, on the proposed amendment of the constitution, in relation to the tenure of the judges' office, and to report to the Senate whether the returns of the officers conducting said elections in the several counties in this state, are made in conformity to the constitution; and that said committee be vested with full power and authority to carry into effect such measures as they in their wisdom, may think most advisable, to cause defaulting officers to make return of said elections, and to cause inaccurate returns to be correctly returned to the secretary of state by the proper officers, if practicable, during the present session of the General Assembly. *Ordered*, that said resolution lie on the table until to-morrow.

The following message was received from the House of Representatives by Mr Tunstall, their clerk:—Mr President: I am instructed by the House of Representatives to inform your honorable body that they have elected a committee, consisting of Messrs Lewis of M. Walker of M. and Perkins, to act with the committee appointed on the part of the Senate, to examine into the condition of the bank of the state of Alabama.

A bill to be entitled an act to prevent persons being sued in civil cases before a justice of the peace out of the company beat in which they may reside, was read a second time and *referred* to the judiciary committee, to consider and report thereon.

The resolution proposing to go into the election of a public printer on to morrow, was taken up, and on motion of *mr* Crawford *ordered* to lie on the table.

A bill to be entitled an act for the relief of Henry Garrard, taxcollector of Lauderdale county, was read a second time and *ordered* to be engrossed and read a third time on to-morrow.

Mr Abercrombie presented the petition of N. E. Benson, and others, of Montgomery county, praying power to be given to the county court of said county to allow the sheriff and clerk each a sum of money not exceeding one hundred dollars per annum as compensation for public services; which was read and *referred* to the judiciary committee, to consider and report thereon.

On motion of Mr Vining, *Resolved*, that the judiciary committee be instructed to inquire into the expediency of so amending the existing laws as to provide more effectually against extortion by Sheriffs, Constables



and other officers; also to inquire into the expediency of reducing the fees of such officers, together with the judges and clerks of the county courts and the clerks of the circuit courts, and of separating the offices of county Treasurer and clerk, with leave to report by bill or otherwise.

On motion of Mr Hubbard, *Resolved*, that the committee on the judiciary be instructed to inquire into the expediency of making the monthly courts, or the return days of the Orphans courts in the several counties in this state uniform throughout the state, with leave to report by bill or otherwise.

And then the Senate adjourned until to-morrow morning at 10 o'clock.  
*Tuesday, November 25, 1828.*

The Senate met pursuant to adjournment.

The following message from the House of Representatives was received by Mr Tunstall, their clerk: Mr President, I am directed to inform your honorable body, that the House of Representatives have received the report of the joint committee appointed by both Houses of the General Assembly to report rules for the government of each House in interchanging messages, the manner of conducting a joint vote of the two Houses of the General Assembly and regulating committees of conference, and have concurred in said report and have adopted the five rules reported by them.

Mr Moore of M. presented the petition of sundry citizens of Fayette county, living on and near Byler's Turnpike road, praying the passage of a law authorizing said road to be turned so as to cross Clear creek immediately below McCarn's mill, which was read and *referred* to a special committee to consist of messrs Moore of M. Hubbard and McVay.

Mr Crawford from the committee on the public printing, made the following report: The committee on the public printing to whom was referred a resolution of the 21st inst. instructing them to inquire the reasons why the acts and journals of the last session of the General Assembly have not been distributed in due time and according to law, respectfully report, that they have taken that subject into consideration, and have addressed a note to the state printer, informing him of the organization of the committee and of the resolution referred to them, and requiring of him an explanation of the reasons why the acts and journals have not been distributed agreeable to law, in answer to which they have received from him a communication in writing, which they now respectfully submit to the consideration of the Senate, which accompanying letter being read, *ordered*, that said report and accompanying document lie on the table.

Mr Crawford from the committee on the public printing, reported a bill to be entitled an act to change the mode of printing and distributing the acts and journals of the General Assembly and for other purposes, which was read and ordered to a second reading on to to-morrow.

On motion of *mr* McVay, *Resolved*, that the committee on the State Bank be instructed to inquire into the necessity and expediency of establishing a branch bank or an office of discount and deposit in the Tennessee Valley, with leave to report by bill or otherwise.

On motion of *mr* Pickett, *Resolved*, that the Secretary of State be instructed to communicate to the Senate the dates respectively of the delivery of the laws and journals of the last Legislature to the several counties in this state.

Mr Smith's resolution of yesterday, proposing to raise a joint committee to examine the returns of the vote upon the proposed amendment of the constitution relative to the tenure of the Judges, &c. was taken up, and *mr* Powell moved to strike out the latter clause thereof, which is in these

words: "and that said committee be vested with full power and authority to carry into effect such measures as they in their wisdom may think most adviseable to cause defaulting offices to make returns of said elections and to cause inaccurate returns to be correctly returned to the Secretary of state by the proper officers if practicable during the present session of the General Assembly," which motion was determined in the negative:

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Crawford, McVay, Powell and Vining—5.

Those who voted in the negative are, Messrs. Abercrombie, Conner, Garth, Hubbard, Merriwether, Moore of J. Moore of M. Perry, Pickett, Ross, Skinner, Smith, Walthell, Watkins and Wood—15.

So the motion was lost and the resolution adopted.

A bill to be entitled an act to authorize Peter G. Oldham, executor of the estate of Joshua Roden, deceased, to sell and transfer real estate was read a second time, amended on motion of *mr* Merriwether, and *ordered* to be engrossed for a third reading on to-morrow.

Engrossed bills to be entitled an act explaining the true intent and meaning of two acts therein mentioned, and an act for the relief of Henry Garrard, tax collector of Lauderdale county, were severally read a third time and passed the Senate. Ordered that the titles thereof be as aforesaid, and that they be sent to the House of Representatives for their concurrence.

In accordance with the foregoing Resolution, offered by Mr. Smith, proposing a joint committee to examine the returns of the vote on the constitutional amendment, relative to the tenure of the judges, Mr President appointed on the part of the Senate, as such committee messrs. Smith, Perry and Moore of Jackson.

And then the Senate adjourned until to-morrow morning at ten o'clock.

*Wednesday, November 26, 1828.*

The Senate met pursuant to adjournment.

Mr Perry from the committee on the judiciary, to whom was referred a resolution on the subject, reported joint resolutions proposing amendments to the constitution of this state, so as to have biennial sessions of the General Assembly; which were read and *ordered* to a second reading to-morrow.

Mr Perry from the same committee, to which was referred a resolution instructing them to inquire into the expediency of more effectually preventing judges of the circuit courts from charging on matters of fact, reported a bill to be entitled, an act more effectually to prevent judges of the circuit courts from charging on matters of fact, and the better to secure the right of the trial by jury, which was read and *ordered* to a second reading to-morrow.

Mr. Perry from the same committee, to whom was referred the petition of N. E. Benson, judge of the county court of Montgomery county, and others praying the passage of a law authorizing the county court of Montgomery county to make allowances to the clerk and sheriff of said county for extra services of a sum not exceeding one hundred dollars per annum, reported, that it is inexpedient to pass such a law, and that the prayer of the petitioners ought not to be granted, which was concurred in.

Mr McVay, from the committee on proportions and grievances, to which was referred a petition on the subject, reported a bill to be entitled an act for the relief of John Balksom, which was read and ordered to a second reading to-morrow.

On motion of Mr Perry, ordered, that the following rules reported by

the joint committee of the two houses and adopted by both branches of the General Assembly be entered on the journals.

Rule 1. In every case of amendment of a bill agreed to in one house, and dissented to in the other, if either house shall request a conference, and appoint a committee for that purpose, and the other house shall also appoint a committee to confer, such committee shall, at a convenient hour to be agreed on by their chairman, meet in the conference chamber, and state to each other verbally, or in writing, as either shall chose the reason of their respective house, for, and against the amendment, and confer freely thereon.

Rule 2. When a message shall be sent from the Senate, to the house of Representatives, it shall be forthwith announced by the door keeper at the door of the house, and shall be respectfully communicated to the chair by the bearer thereof, except the house is taking a question, and the same ceremony shall be observed when a message is sent from the House of Representatives to the Senate.

Rule 3. While bills are on their passage between the two houses, they shall be under the signature of the secretary or clerk of each house respectively.

Rule 4. After a bill shall have passed both houses, it shall be duly enrolled by the clerk of the House of Representatives, or secretary of the Senate, as the bill may have originated in one or the other house before it shall be presented for signature.

Rule 5. When a bill or resolution, which shall have passed in one house is rejected in the other, notice thereof shall be given to the house in which the same may have passed.

Mr Moore of Jackson, presented the account of Charles Lewis against the state, which was *referred* to the committee on accounts and claims.

Mr. Walthall offered the following resolution, *Resolved*, That the Senate will on Saturday next, at the hour of 11 o'clock, proceed to the classification of the members, as required by the constitution, and that the secretary prepare a box, and twenty two tickets placed therein, upon eight of which shall be written first class; seven ditto, second class; seven ditto, third class; and that he shall call the roll of members, and the assistant secretary, as their names are called, shall draw from the box a ticket, and whatever class shall be written thereon, shall be the class to which said member shall belong. Mr Hubbard moved to amend the resolution, so as that the eight members shall compose the 2nd. class, instead of the first; which was carried. Yeas 14—nays 5.

The yeas and nays being desired, those who voted in the affirmative are—Mr President, Abercrombie, Conner, Crawford, Garth, Hubbard, Moore of J. Moore of M. Perry, Pickett, Skinner, Smith, Vining and Wood.

Those who voted in the negative are—Messrs Merriwether, McVay, Powell, Ross and Walthall. The resolution as amended was then agreed to.

Mr Moore of J. offered the following resolution: *Resolved*, that the committee on the state capitol be instructed to require of the commissioners appointed to superintend the erection of the said capitol, a statement of the progress in its erection, the different contracts and their nature, the amount of monies expended, the amount on hand, whether in their opinion there will be a sufficiency of the sum appropriated for that purpose to complete the building; which was adopted.

A message from the House of Representatives, by Mr Ready: Mr President, the House of Representatives concur in the resolution of the Senate, appointing a committee to examine the returns of the votes of the citizens given at the last general election on the proposed amendment to

to the constitution, in relation to the tenure of the judges' office, and have amended the same by inserting after the word "Senate" the words "and the House of Representatives;" in which they desire your concurrence. *Ordered*, that the Senate concur in said amendment, and that the secretary acquaint the House therewith.

Mr Watkins offered the following resolution: *Resolved*, that the judiciary committee inquire whether sheriffs, who have not made within the proper time a return of the votes for electors of president and vice-president, ought to be allowed any compensation therefor; and whether laws, so far as they require returns to the department of state, at the seat of government, by sheriffs of the several counties, ought not to be so amended as to impose heavy penalties for neglect of said duties; which was adopted.

Mr Ross offered the following resolution: *Resolved*, with the concurrence of the House of Representatives, that the two Houses will assemble in the Representative Hall at 3 o'clock, P.M. on to-morrow, for the purpose of electing a harbormaster and four wardens for the port and harbor of Mobile; which was adopted. *Ordered*, that the secretary acquaint the House of Representatives therewith.

An engrossed bill to be entitled an act to authorize Peter G. Oldham, executor of the estate of Joshua Roden, deceased, to sell and transfer real estate, was read a third time and passed. *Ordered*, that the title of the bill be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

A bill to be entitled an act to change the mode of printing and distributing the acts and journals of the General Assembly, and for other purposes, was read the second time. *Ordered*, that the bill lie on the table, and that fifty copies thereof be printed for the use of the Senate.

The following communication was received from the Governor by Mr Thornton, secretary of state:

EXECUTIVE DEPARTMENT, November 26, 1828.

The Hon. President and Members of the Senate.

*Gentlemen*: I have the pleasure to lay before you resolutions of the state of Vermont on resolutions of the states of Maine and Connecticut in relation to making internal improvements, by appropriations from the revenue of the United States;—on the resolution of the state of Georgia, proposing an amendment to the constitution of the United States to prevent the election of President and Vice-President from devolving, in any case, on the House of Representatives in Congress; and on the resolution of the state of Ohio, on the same subject. Also, on the report and the resolutions of the state of Alabama, disapproving of the resolutions of the states of Ohio and New-Jersey, on the emancipation and foreign colonization of slaves; the reports and resolutions of the state of Georgia on the tariff, and the colonization of slaves in Africa; the report and resolutions of the state of South Carolina on the origin of the federal government, and whether certain measures adopted by Congress are not in violation of the federal compact; and the resolution of the state of Ohio on the same subject.

During the recess of General Assembly, Eli Shortridge was appointed judge of the the third judicial circuit, to fill the vacancy occasioned by the resignation of Judge Gayle. I also have the honor to transmit you the resignation of Henry Goldthwaite, Esq. solicitor of the second judicial circuit, which has been received during your present session. I have the honor to be, most respectfully, your obedient servant.

JOHN MURPHY.

*Ordered*, That the resolutions of the state of Vermont, in relation to making internal improvements by appropriations from the revenue of the United States be referred to a special committee; whereupon messrs Hubbard, Perry and Picket, were appointed said committee.

*Ordered*, That the report and resolutions of the state of Georgia, on the tariff, be referred to the committee appointed on so much of the Governor's annual communication as relates to that subject.

*Ordered*, That the resolutions of the state of Ohio, on certain resolutions of the state of South Carolina, respecting the constitutional powers of the general government of the United States, be referred to the committee on the Judiciary, to consider and report thereon.

*Ordered* that the communication, together with the remainder of the accompanying documents lie on the table.

Mr Garth, moved to reconsider the vote of the Senate, adopting a resolution proposing a classification of the senators, on Saturday next; which was lost. Yeas, 10—nays, 10.

The yeas and nays being desired, those who voted in the affirmative are, Messrs. Garth, Hubbard, Mariwether, Moore of Jackson, Perry, Picket, Skinner, Smith, Vining and Wood.

Those who voted in the negative are, Mr President, Abercrombie, Conner, Crawford, Moore of Marion, McVay, Powell, Ross, Walthall and Watkins. So the motion was lost.

Mr Smith offered the following resolution: *Resolved*, That the military committee be instructed to inquire and ascertain from the proper authority, what number and description of public arms belonging to the state now remain on hand, and what is the condition of said arms, what number and description thereof have been distributed since the last session of the general assembly; to whom and to what section of the state the respective distributions have been made, and report the same to this house; which was adopted.

Mr Crawford offered the following resolution, *Resolved*, That the committee on public printing be authorized to contract for such printing as may be necessary for the use of the Senate, until the election of a public printer shall take place; which was adopted.

Mr Vining offered the following resolution: *Resolved*, That the military committee be instructed to inquire into the expediency of exempting from patrol duty, all persons who do not own slaves, with the exemption of such persons as are engaged as overseer of any slave or slaves; also to inquire into the expediency of pointing out a different mode of appointing patrols, by placing that power in the two justices of the peace in each captain's company, and requiring the Captains of companies to make annually a complete return of all persons in their command liable to do patrol duty, or such other mode as they may deem most expedient, with leave to report by bill or otherwise, which was adopted.

On motion of Mr Abercrombie, *Ordered*, That Mr Vining be added to the military committee.

And then the Senate adjourned till to-morrow morning at ten o'clock.

*Thursday, 27th November, 1828.*

The Senate met pursuant to adjournment.

Mr Perry, from the committee on the judiciary to which was referred a bill to be entitled an act to prevent persons being sued in civil cases before justices of the peace, out of the company beat in which they permanently reside, reported the same without amendment. *Ordered*, That the bill be recommitted to a special committee, consisting of messrs. Abercrombie, Watkins and Moore of Jackson, to consider and report thereon.

Mr Perry from the same committee, to whom was referred a bill to be entitled an act to amend an act to authorize the sale of 16th sections and for other purposes, reported the same without amendment: *Ordered*,

That the bill be engrossed, and made the order of the day for a third reading to-morrow.

Mr Perry from the same committee, to whom was referred a resolution directing them to inquire into the expediency of authorizing the commissioners of school lands to maintain actions of trespass reported, that the commissioners under the existing laws, have that power, and thus no further act of legislation on the subject is deemed necessary; which was concurred in.

Mr Perry, from the same committee to whom was referred so much of the Governors message, as relates to contested elections of sheriffs, reported a bill to be entitled an act prescribing the mode of trying contested elections of certain county offices; which was read and ordered to a second reading to-morrow.

Mr Perry from the same committee to whom was referred the petition of John E. Anderson of Marengo county, in relation to the contest of his election, as sheriff of said county at the last general election, reported that they have no power to try and decide said contest, and asked to be discharged from the further consideration thereof; which was agreed to.

Mr Moore of Marion, from the special committee to which was referred a petition on the subject, reported a bill to be entitled an act to authorize Archibald McCarns to turn Byler's Turnpike road below his mill on clear creek in Fayette county; which was read and ordered to a second reading to-morrow.

Mr Ross presented the petition of sundry merchants of the city of Mobile, recommending Philip McLosky, Andrew Armstrong, William R. Hallett, Joseph W. Moore and Jonathan Emanuel as suitable persons for port wardens of said city; which was read and laid on the table.

Mr Ross also present the petition of Seth Stodder, praying to the appointed harbor master of Mobile; which was read and laid on the table.

On motion, *Ordered*, That Mr. Powell be added to the committee on accounts and claims, and Mr Walthall to the committee on county boundaries.

Mr Garth offered the following resolution: *Resolved*, That the judiciary committee be instructed to inquire into the expediency of providing by law for the settlement of the accounts of trustees; for removing trustees from their trust; and for the appointment of others, and such other amendments to the existing law, as they may think expedient; which was adopted.

Mr. President laid before the Senate, the following communication from the comptroller of public accounts.

*Comptrollers Office, Tuscaloosa, November 26, 1828.*

The Hon. President of the Senate.—Sir: I have the honor to lay before you the enclosed report on the financial concerns of the state, for the year ending this day. I am very respectfully, your obedient servant.

(Signed)

SAMUEL PICKENS

*Ordered*, That the report lie on the table, and that three hundred copies thereof be printed for the use of the Senate.

Mr President also laid before the Senate the following communication from the Secretary of State.

*Secretary of State's Office, November 26, 1828.*

Sir: In obedience to a resolution of the Senate of the 25th instant, instructing the secretary of state, to communicate to the Senate, the dates, respectively of the delivery of the law and journals of the last Legislature, to the several counties in this state," I have the honor to submit the fol-

lowing statement which presents the information called for. I have the honor to remain with great respect, your obedient servant.

J. I. THORNTON

*Ordered*, That the communication, together with the statement annexed thereto, lie on the table.

A message from the House of Representatives, by Mr Tunstall, their clerk: Mr President: The House of Representatives, concur in the resolution of the Senate, proposing to go into the election of a harbor master, and four wardens for the port and Harbor of Mobile, at 3 o'clock P. M. on to-day. They have appointed a committee, consisting of messrs Barton, Penn, Walker, of D. Broadnax and Foster, to act with the committee appointed on the part of the Senate, proposing to raise a joint committee, to examine the votes of the citizens, given at the last general election, on the proposed amendment of the constitution, in relation to the tenure of the judges.

A bill to be entitled an act for the relief of John Balksom, was read the second time and ordered to lie on the table.

A bill to be intitied an act more effectually to prevent judges of the circuit court from charging juries on matters of fact, and the better to secure the right of the trial by jury, was read a second time, and recommitteed to the committee on the judiciary to consider and report thereon.

Joint resolutions, proposing amendments to the constitution of this state, so as to have binniel sessions of the general assembly, were read the second time, and ordered to lie on the table.

Mr Hubbard offered the following resolution: *Resolved*, That the Secretary of state be requested to inform this house whether he caused the resolutions, proposing amendments to the constitution of this state, relative to the alteration of the tenure by which the judges hold their offices, to be duly published in print in the several newspapers in this state, three months previous to the general election in August last, and if not published in all the newspapers recording to the late act on that subject, whether he caused them to be published in any, and what particular newspapers they were so published three months previous to the said election; which was adopted.

Mr Perry offered the following resolution: *Resolved*, That the Judiciary committee be instructed to inquire into the expediency of allowing appeals of writs of error in criminal cases, with leave to report by bill or otherwise, and the question being put on the adoption of the resolution, it was determined in the affirmative. Yeas, 14—nays 6.

The yeas and nays being desired, those who voted in the affirmative are, Mr. President, Abercrombie, Conner, Crawford, Hubbard, McVay, Moore of Jackson, Perry, Ross, Smith, Vening, Walthall, Watkins and Wood, 14

Those who voted in the negative are, Messrs Garth, Merriwether, Moore of Marion, Pickett Powell and Skinner. So the Resolution was adopted.

And then the Senate adjourned till 3 o'clock this evening.

*Evening Session*—Mr. Moore of Jackson, offered the following resolution: *Resolved*, that the Senate construe the law, providing for the election of harbor master and wardens of the port of Mobile, that first the two houses will proceed to the election of five port Wardens from which they shall afterwards erect a harbor master, in which construction they desire the concurrence of the House of Representatives, which was adopted.

*Ordered*, That the secretary acquaint the House of Representatives therewith.

A message from the House of Representatives by Mr Tunstall, their clerk:—Mr President, The house concur in the construction given by the Senate to the law providing for the election of wardens and harbor master for the port of Mobile.

A message was also received from the House of Representatives by Mr Tunstall, inviting the Senate to assemble in the representative hall for the purpose of going into the election of five wardens for the port of Mobile, one of whom to be chosen harbor master: whereupon, the members of the Senate repaired to the hall of the House of Representatives, and having taken their seats, Mr President arose and announced the object of their meeting, when the two Houses proceeded to the election.

Frederick Sheffield, Philip McLoskey, Andrew Armstrong, Joseph W. Moore, William R. Hallett, Asa Prior, William P. Brown, William H. Bliss and Sidney Pitcher being in nomination for wardens of the port of Mobile.

*The votes stood thus: For Mr Sheffield 68 votes—For Mr McLoskey 75—Mr Armstrong 80—Mr Moore 66—Mr Hallett 81—Mr Prior 14—Mr Brown 9—Mr Bliss 42—Mr Pitcher 20.*

*Those who voted for Frederick Sheffield are,* Mr President, Abercrombie, Conner, Crawford, Garth, Hubbard, McVay, Merriwether, Moore of Marion, Perry, Pickett, Ross, Skinner, Smith, Vining, Walthall and Watkins, of the Senate—Mr Speaker, Adams, Belser, Bibb of L. Bibb of M. Bonnell, Brandon, Broadnax, Brown, Cawthon, Clough, Cook, Coopwood, Dale, Dupuy, Durrett, Edmondson, Fearn, Foster, Gage, George, Harris, Hill, Hodges, Hudson, Lane, Lawler, Lea, Lewis of F. Lewis of M. Mardis, Metcalfe, Mims, Mobley, Musgrove, McElderry, Parsons, Penn, Richardson, Robinson, Salter, Saunders, Smith of Land, Sykes, Tarver, Terry, Townsend of M. Townsend of P. Walker of D. Walker of M. and Wallis.

*Those who voted for Philip McLoskey are,* Mr President, Abercrombie, Conner, Crawford, Garth, Hubbard, McVay, Merriwether, Moore of J. Moore of M. Perry, Pickett, Powell, Ross, Skinner, Smith, Vining, Walthall, Watkins, of the Senate. Mr Speaker, Adams, Ambrister, Anderson, Banks, Barker, Belser, Bibb of L. Bibb of M. Bonnell, Brandon, Clark, Cawthon, Clough, Cole, Colgin, Cook, Coopwood, Dale, Durrett, Edmondson, Fearn, Flournoy, Foster, Gage, George, Harris, Hodges, Lane, Lea, Lewis of F. Lewis of M. Mims, Mobley, Musgrove, McElderry, Parsons, Penn, Pickens, Richardson, Robinson, Rogers, Russell, Salter, Saunders, Smith of Land, Sykes, Tarver, Townsend of M. Townsend of P. Walker of D. Walker of M. Wallis, Weissinger, Welborne and Whitfield.

*Those who voted for Mr Armstrong are,* Mr President, Abercrombie, Conner, Crawford, Garth, Hubbard, McVay, Merriwether, Moore of J. Moore of M. Perry, Pickett, Ross, Skinner, Smith, Walthall, Watkins and Wood, of the Senate. Mr Speaker, Adams, Ambrister, Anderson, Banks, Barker, Bibb of L. Bibb of M. Bonnell, Brandon, Brown, Clark, Cawthon, Clough, Cole, Colgin, Cook, Coopwood, Dale, Duke, Dupuy, Durrett, Edmondson, Fearn, Flournoy, Foster, Gage, George, Harris, Hill, Hodges, Hudson, Lane, Lawler, Lea, Lewis of F. Lewis of M. Mardis, Massey, Mims, Mobley, Musgrove, McElderry, Parsons, Penn, Pickens, Richardson, Robinson, Rogers, Russell, Salter, Saunders, Smith of J. Smith of L. Sykes, Tarver, Townsend of M. Townsend of P. Walker of D. Walker of M. Wallis, Weissinger and Whitfield.

*Those who voted for Mr Moore are,* Mr President, Abercrombie, Conner, Crawford, Garth, Moore of M. Perry, Pickett, Ross, Skinner, Walthall, Watkins and Wood, of the Senate. Mr Speaker, Ambrister, Anderson, Banks, Barker, Barton, Bibb of L. Bibb of M. Bonnell, Brandon, Clark, Cawthon, Clough, Cole, Cook, Coopwood, Dale, Duke, Durrett, Edmondson, Fearn, Gage, George, Hodges, Hudson, Lane, Lewis of F. Lewis of M. Mardis, Massey, Metcalfe, Mims, McElderry, Parsons, Penn, Perkins, Pickens, Richardson, Robinson, Russell, Salter, Saunders, Smith of J. Smith of L. Sykes, Tarver, Townsend of M. Townsend of P. Walker of D. Walker of M. Wallis, Weissinger, Welborne and Whitfield.

*Those who voted for Mr Hallett are,* Mr President, Abercrombie, Conner, Crawford, Garth, Hubbard, McVay, Merriwether, Moore of J. Perry, Pickett, Powell, Ross, Skinner, Smith, Vining, Walthall, Watkins and Wood, of the Senate.—Mr Speaker, Adams, Ambrister, Anderson, Banks, Barker, Barton, Belser, Bibb of L. Bibb of M. Bonnell, Brandon, Broadnax, Brown, Clark, Cawthon, Clough, Cole, Colgin, Cook, Coopwood, Duke, Dupuy, Durrett, Edmondson, Fearn, Flournoy,



Foster, Gage, George, Harris, Hodges, Hudson, Lane, Lawler, Lea, Lewis of P. Lewis of M. Mardis, Massey, Mims, Mobley, McElderry, Parker, Parsons, Penn, Pickens, Richardson, Robinson, Russell, Salter, Saunders, Smith of J. Smith of L. Sykes, Tarver, Townsend of M. Townsend of P. Walker of D. Walker of M. Weissinger and Whitfield.

*Those who voted for Mr Prior are,* Mr Merriwether, Moore of J. and Vining, of the Senate. Mr Belser, Broadnax, Flournoy, Foster, Hill, Mobley, Parker, Perkins, Rogers, Terry and Welborne.

*Those who voted for Mr. Brown are,* Mr Powell, of the Senate. Mr Barton, Broadnax, Colgin, Duke, Metcalfe, Parker, Perkins and Terry.

*Those who voted for Mr Bliss are,* Mr Hubbard, McVay, Moore of J. Moore of M. Powell, Smith, Vining and Wood, of the Senate. Mr Adams, Ambrister, Anderson, Banks, Barton, Belser, Broadnax, Brown, Clark, Cole, Colgin, Duke, Dupuy, Flournoy, Harris, Hill, Hudson, Lawler, Lea, Massey, Metcalfe, Musgrove, Parker, Perkins, Pickens, Rogers, Russell, Smith of J. Smith of L. Terry, Walker of M. Wallis, Weissinger, Welborne and Whitfield.

*Those who voted for Mr Pitcher are,* Mr Powell and Wood, of the Senate, Mr Barker, Barton, Brown, Clark, Duke, Dupuy, Hill, Hudson, Lawler, Mardis, Massey, Metcalfe, Musgrove, Parker, Perkins, Rogers, Smith of J. Terry and Welborne.

Mr Sheffield, Mr McLoskey, Mr Armstrong, Mr Moore and Mr Hallett having received a majority of the votes, Mr Speaker declared them duly elected wardens for the port and harbour of Mobile.

Both Houses then proceeded to the election of a harbour master for the port and harbour of Mobile, Frederick Sheffield being in nomination.

*Those who voted for Mr Sheffield are,* Mr President, Abercrombie, Conner, Crawford, Garth, Hubbard, McVay, Merriwether, Moore of J. Moore of M. Perry, Pickett, Powell, Ross, Skinner, Smith, Vining, Walthall, Watkins and Wood of the Senate. Mr Speaker, Adams, Ambrister, Anderson, Banks, Barker, Barton, Belser, Bibb of L. Bibb of M. Bonnell, Brandon, Broadnax, Brown, Clark, Cawthon, Clough, Cole, Colgin, Cook, Coopwood, Dale, Duke, Dupuy, Durrett, Edmondson, Fearn, Flournoy, Foster, Gage, George, Harris, Hill, Hodges, Hudson, Lane, Lawler, Lea, Lewis of F. Lewis of M. Mardis, Massey, Metcalfe, Mims, Mobley, Musgrove, McElderry, Parker, Parsons, Penn, Pickens, Richardson, Robinson, Rogers, Russell, Salter, Sanders, Smith of J. Smith of L. Sykes, Tarver, Terry, Townsend of M. Townsend of P. Walker of D. Walker of M. Wallis, Weissinger, Welborne and Whitfield.

Frederick Sheffield having received all the votes present, was declared by Mr Speaker to be duly elected harbormaster for the port of Mobile.

The election being completed, the Senate withdrew, returned to their own chamber, and Mr President resumed the chair, when on motion, the Senate adjourned till to-morrow morning at 10 o'clock.

*Friday, November 23, 1828.*

The Senate met pursuant to adjournment.

Mr. Merriwether from the committee on roads, bridges and ferries to whom was referred a petition on the subject, reported a bill to be entitled an act to alter and amend an act, entitled an act to establish a permanent road from Florence in Lauderdale county to Athens in the county of Limestone; which was read and ordered to a second reading to-morrow.

Mr. Powell offered the following resolution, *Resolved:* That the committee on the State Bank be requested to examine into the propriety and expediency of passing a law, vesting in the President and directors of the Bank of the state of Alabama, the power of appointing such officer or officers, as may be necessary to serve notices, to levy executions, and to collect money due to the said Bank; and report by bill or otherwise; which was rejected. Yeas 9—nays 12.

The yeas and nays being desired, those who voted in the affirmative are Mr. President, Conner, Moore of Jackson, Moore of Marion, Powell, Ross, Smith, Walthall and Watkins.

Those who voted in the negative are Messrs. Abercrombie, Crawford, Garth, Hubbard, Lewin, McVay, Merriwether, Perry, Pickett, Skinner, Vining & Wood. So the Resolution was rejected.

mittee be instructed to inquire into the expediency of providing a summary mode of proceeding against sheriffs, when they may have collected fines and forfeitures and failed to pay over the same; and also what further provisions may be necessary to ensure punctuality in the collection of monies on civil process; which was adopted.

Mr Watkins offered the following resolution: *Resolved*. That with the concurrence of the House of Representatives, the Senate will convene in the Representative Hall on Saturday the 29<sup>th</sup> instant, at 3 o'clock P. M. to go into the election of a Secretary of State, treasurer & comptroller of public accounts, which was adopted. *Ordered*, that the secretary acquaint the House of Representatives therewith.

Mr Moore of Jackson, offered the following resolution, *Resolved*: That the judiciary committee be instructed to inquire into the expediency of repealing so much of an act, passed January 4<sup>th</sup> 1826, as requires the judges of the circuit courts to preside successively in every circuit in the state; which was adopted.

A message from the House of Representatives by Mr Tinsall their clerk: Mr President, the House of Representatives have adopted the following resolution, in which they desire your concurrence:—*Resolved*, That with the concurrence of the Senate, the committee on the public printing be instructed jointly, with such committee as may be appointed for that purpose, on the part of that body to contract for the printing, necessary for the use of the two Houses of the Legislature, until a state printer may be elected.

And be it further *Resolved*, that said committee inquire, whether the public printing can be expeditiously and well done by either of the printers now in Tuscaloosa, or elsewhere in this state, and report to this House; and whether the compensation heretofore paid to the public printer was just and reasonable.

They have read three several times, and passed bills which originated in their house, entitled an act to repeal an act entitled an act to provide for the payment of petit jurors in certain counties therein named, approved Dec. 22, 1826, so far as said act relates to the county of Shelby. An act to authorize the sheriff or coroner of the county of Shelby, to sell lands or slaves levied on by execution, at the town of Montevallo. An act to divorce Lucy Lewis, from Mordecai Lewis. An act to divorce Clarisa Wade from George W. Wade; and an act to divorce Hugh McVay from Sophia W. McVay; in all of which they desire your concurrence.

On motion of Mr Crawford, *Ordered*, that the Senate disagree to the resolution, from the House of Representatives in relation to the public printing.

Bills of the House of Representatives entitled, an act to report an act entitled an act to provide for the payment of petit jurors in certain counties therein, named approved December 22, 1826, so far as said act relates to the county of Shelby; an act to authorize the sheriff or coroner of the county of Shelby, to sell lands and slaves levied on by execution, at the town of Montevallo; an act to divorce Lucy Lewis from Mordecai Lewis; an act to divorce Claiss Wade from George W. Wade; an act to divorce Hugh McVay from Sophia W. McVay; were severally read the first time and ordered to a second reading to-morrow.

The President laid before the Senate the following communication from the secretary of state.

*Secretary of State's office, Tuscaloosa. November 28, 1828.*

Sir: In obedience to a resolution of the 27<sup>th</sup> instant, "requesting the Secretary of State to inform the Senate whether he caused the resolutions proposing amendments to the constitution of this state, relative to the alteration of the tenure by which the judges hold their offices to be duly published in print in the several newspapers in this state, three months previous to the general election in August last, and if not published in all the newspapers according to the late act on that subject, whether he caused them to be published in any, and what particular papers they were published three months previous to said election. I have the honor to state, that the resolution was published in the two newspapers of this place, on the 3<sup>rd</sup> of May, and continued in said papers till the 4<sup>th</sup> of August last, which fact can be ascertained by reference to the papers herewith submitted, and that I requested all the editors throughout the state to publish the same till the general election in August last.

Mr Crawford offered the following resolution, *Resolved*, That the judiciary com

It is not in my power to say whether the request was complied with by all the editors in the state or not, as none of the distant editors forwarded to me their papers; yet I have reason to believe that the request was generally attended to from the number of accounts since submitted to this department for payment; I will also avail myself of this opportunity, to state that I forwarded to each sheriff in this state, soon after the publication of said resolution, a copy of the act prescribing the mode of ascertaining the sense of the citizens of this state on the proposed amendment, which was not required of me by law, but which was essential to the officers engaged in the matter, and which fact, one of your honorable body no doubt recollect.—I remain with great respect, your obedient servant.

J. I. THORNTON.

Hon. Nicholas Davis, President of the Senate.

*Ordered*, that the communication be referred to the joint committee appointed to examine the returns of the votes on the proposed amendment to the constitution in relation to the tenure of the judges.

An engrossed bill to be entitled, an act to amend an act entitled an act to authorize the sales of the sixteenth sections and for other purposes, was read the third time and passed: *Ordered*, that the title of the bill be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

A bill to be entitled an act to authorize Archibald McCarns to turn Byler's turnpike road below his mill on clear creek in Fayette county, was read the second time and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act prescribing the mode of contesting the elections of certain county officers was read the second time and recommitted to the committee on the judiciary, to consider and report thereon.

Mr. McVay called up the bill to be entitled, an act for the relief of John Bolksnm. *Ordered* that it be engrossed and made the order of the day, for a third reading to-morrow.

Mr. Ross, offered the following resolutions: *Resolved*, that the judiciary committee be instructed to inquire into the expediency of authorizing the appointment of a jurist, learned in the law, to prepare a penal code for this state founded on principles of reformation and not of vindictive justice, and lay the same when prepared before the General Assembly for their examination.

*Resolved*, farther, that the same committee be instructed to inquire into the expediency of authorizing the appointment of one or more persons learned in the law, to revise and amend the statutes of this state, whose duty it shall be to consolidate and amend all the statutes of a public nature which may be in force, and to arrange them in titles according to their respective subjects, and to report the same by bills, to the next General Assembly, and to report also at the same such additional bills as may be necessary to form a complete code of laws for the state, which was rejected.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

Saturday, November 29, 1828.

The Senate met pursuant to adjournment.

Mr. Ross introduced a bill to be entitled an act to repeal in part, an act approved January 13 1828, and for other purposes, which was read and ordered to a second reading on Monday next.

Mr. Powell introduced a bill to be entitled an act to regulate and reduce the expenses of the General Assembly, which was read and ordered to a second reading on Monday next.

Pursuant to the requirements of the 13th section of the third article of the Constitution of this State, and to a resolution of the Senate of the 26th inst. the Senators chosen according to the last apportionment, and now convened, were divided by lot into three classes as nearly equal as possible—the names of the following seven members were drawn in the first class, to wit: David Conner, from the District composed of St. Clair and Blount; Jesse W. Garth, from Morgan; Hugh McVay, from Lauderdale; James Moore, from Pickins, Fayette and Marion; Horatio G. Perry from Dallas; Jack F. Ross, from Mobile, Washington and Baldwin; and Theophilus Skinner, from Franklin, whose seats are to be vacated at the expiration of the first year.

The following eight members were drawn in the second class, to wit: Nicholas

Davis, of Limestone; Thomas Evans, from Wilcox and Marengo; Neal Smith, from Monroe and Clark; John Vining, from Madison; Richard B. Walball, from Perry; John Watkins, from Concord and Butler; John Wood, from Jefferson; and James Abercrombie, from Montgomery, whose seats are to be vacated at the expiration of the second year.

The names of the following seven members were drawn in the third class, to wit: Thomas Crawford, from Bibb and Shelby; David Hubbard, from Lawrence; William Irwin, from Pike, Henry, Covington and Dale; Zechariah Merrewether, from Greene; Samuel B. Moore, of Jackson; William A. Pickett, of Autauga; and Leven Payell, of Tuscaloosa, whose seats are to be vacated at the expiration of the third year.

An engrossed bill entitled an act for the relief of John Balksom, was read the third time and passed. *Ordered*, that the title of the bill be as aforesaid, and that it be sent to the House of Representatives for concurrence.

An engrossed bill to be entitled an act to authorize Archibald McCarns to turn Belch's bridge road, to lay his mill on Clear Creek in Fayette county, was read the third time and passed. *Ordered*, that the title of the bill be as aforesaid, and that it be sent to the House of Representatives for concurrence.

A bill to be entitled, an act to alter and amend an act to establish a permanent road from Florence in Lauderdale county, to Athens in the county of Limestone, was read the second time and ordered to be engrossed for a third reading on Monday next.

*Ordered*, That the communication from the Secretary of State, furnishing an abstract of the returns of the votes from the different counties in this State, relative to the proposed alteration of the Constitution in relation to the tenure of the Judges, be referred to the joint committee appointed to examine said returns.

A bill to be entitled an act to authorize the Sheriff and Coroner of Shelby county, to sell lands or slaves levied on by execution at the town of Montevallo, was read the second time, amended on Mr. Crawford's motion, and ordered to a third reading on Monday next.

A bill to be entitled an act to repeal an act to provide for the payment of petit juries in certain counties the same as amended, approved December 22, 1826, so far as said act relates to the county of Shelby, was read a second time and ordered to a third reading on Monday next.

Bills entitled an act to divorce Leary Lewis from Modie Lewis; an act to divorce Chrissa Wade from George W. Wade; and an act to divorce Hugh McVay, from Sophia McVay; were severally read the second time. *Ordered*, That the bills together with the accompanying documents be referred to the committee on divorce and alimony to consider and report thereon.

And then the Senate adjourned till Monday at 10 o'clock.

*Monday, December 1st, 1828.*

The Senate met pursuant to adjournment.

Mr. Perry from the committee on the Judiciary, to which was referred a bill to be entitled an act more effectually to prevent Judges of the Circuit Courts from charging juries on matters of fact, and the better to secure the right of trial by jury, reported the same as amended, which was concurred in. *Ordered*, That the bill be engrossed, and made the order of the day for a third reading to-morrow.

A message from the House of Representatives by Mr. McClellan their Clerk: Mr. President, the House of Representatives have read three several times and passed a bill which originated in the Senate entitled an act relating to penal statutes, and have amended the same in the manner herewith shewing, in which they desire your concurrence. They have passed bills which have originated in their House entitled an act to divorce Elizabeth S. Littlepage from Thomas W. Littlepage; an act to emancipate a certain Slave therein named, and an act to emancipate a certain slave therein named. In all of which they desire your concurrence. *Ordered*, That the Senate concur in the amendment made by the House of Representatives, to the bill entitled an act relating to penal statutes, and that the Secretary acquaint the House of Representatives therewith.

Bills from the House of Representatives entitled an act to emancipate a certain

slave therein named; an act to emancipate a certain slave therein named; and an act to divorce Elizabeth S. Littlepage from Thomas W. Littlepage, were severally read the first time and ordered to a second reading to-morrow.

An engrossed bill to be entitled an act to alter and amend an act entitled an act to establish a permanent road from Florence in the county of Lauderdale, to Athens in the county of Limestone, was read the third time and passed. *Ordered*, That the title of the bill be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

A bill to be entitled, an act to repeal an act entitled an act to provide for the payment of petit jurors in certain counties, approved, December 22, 1826, so far as said act relates to the county of Shelby, was read the third time and passed. *Ordered*, that the Secretary acquaint the House therewith.

*Ordered*, that bills entitled an act to authorize the sheriff or coroner of the county of Shelby to sell lands and slaves levied on by execution, at the town of Montevallo, and, an act to reduce and regulate the expenses of the General Assembly, lie on the table, till to-morrow. A bill to be entitled an act to repeal in part an act approved, January 13, 1828, and for other purposes, was read the second time, and ordered to be engrossed for the third reading to-morrow.

Mr. Vining offered the following resolution: *Resolved*, that the committee on schools, colleges, and school and university lands be instructed to inquire into the expediency of providing by law for leasing the 16th sections for such number of years and under such restrictions of cultivation as may best comport with the preservation of the soil, and timber; with leave to report by bill or otherwise, which was adopted.

Mr. Hubbard from the special committee to which was referred so much of the Governor's annual communication as relates to the donation of public lands made by the government of the United States to the state of Alabama for the purpose of removing the obstructions to the navigation of certain rivers, reported a bill to be entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named, which was read and ordered to a second reading to-morrow.

The following communication was received from the Governor by Mr. Thornton, secretary of state:

EXECUTIVE DEPARTMENT, November 28, 1828.

The Hon. the President and Members of the Senate.

Gentlemen: I have the honor to transmit the documents enclosed for your consideration. The Trustees of the University of Alabama now hold upwards of sixteen hundred dollars of the bills of the Tombeckbe Bank, which were received by their several agents before it was known to them that the bank had ceased to pay specie for its notes. The president was required by a resolution of the board of Trustees, to make application to the bank for the redemption of this amount, by funds which would be available, as they were about to commence the buildings of the Institution, and might soon be in urgent need of the money. A letter was accordingly addressed to the President of the Bank, on the 1st of October last, in answer to which, the enclosed letter, making a proposition of settlement with the board of Trustees, has been received. The board would be willing to close with the proposition which is made to them, if the state should think proper to acknowledge the demand of the bank, and to make an appropriation for its payment. There is also of the notes of the Tombeckbe bank, upwards of nine hundred dollars in the Treasury of the state. It will be perceived, that the proposition also provides for the payment or redemption of this sum. The loan alluded to, and upon which the demand of the bank arises, was made to sustain the credit of Treasury notes which the state had occasion to issue. As the state had demands against the bank for its annual taxation or several years, it was supposed that these demands would settle up for the loan, and the amount of the note negotiated by the state, with the exception of \$1,000 which was drawn out and deposited in the state Treasury, continued to remain in the bank. All the suits to coerce the bank to pay its taxes have failed. The expectation therefore to settle with it, in the way above mentioned, has failed also. The demand of the bank seems to be predicated on the sum of \$1,000 which was drawn out, as already mentioned, and the interest on the entire loan, up to the present, or some recent period, which is not precisely stated. I am informed that there was an agreement entered into between the executive and the bank in the negotiation of the loan, but do not know that it contains any stipulation with which the bank has not

complied, or which would prove of any advantage to the state in its settlement with the bank. I have not been able to find a duplicate of it in any of the offices, but was readily promised a copy by the cashier of the bank. I have thus the pleasure to give to the General Assembly all the information which I possess on this subject. I have the honor to be, most respectfully, your obedient servant.

(Signed)

JOHN MURPHY.

*Ordered*, that the communication be referred to the committee on schools and colleges, and school and college lands, to consider and report thereon, and that the accompanying documents be referred to the same committee.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Tuesday, December 2, 1828.*

The Senate met pursuant to adjournment.

Mr Skinner presented the petition of sundry citizens of the state of Alabama, praying the passage of a law relieving Henry S. Foote from certain disabilities incurred by a violation of the laws of this state to suppress duelling; which was read and referred to a special committee, consisting of messrs. Skinner, Perry and Pickett, to consider and report thereon.

Mr Powell presented the petition of William Bryant, praying the authority to emancipate certain slaves; which was read and referred to a special committee, consisting of messrs. Powell, Garth and Crawford, to consider and report thereon.

Mr Garth, from the committee on divorce and alimony to which was referred bills of the following titles, to wit: An act to divorce Leicy Lewis from Mordicai Lewis; an act to divorce Hugh McVay from Sophia W. McVay; an act to divorce Clarissa Wade from George W. Wade, reported the same without amendment. *Ordered*, that they be severally read a third time to-morrow.

Mr Merriwether, from the committee on roads,\* bridges and ferries to which was referred a petition on the subject, reported a bill to be entitled an act to alter and change a certain part of the road leading from Florence, in Lauderdale county, to Athens, in Limestone county; which was read and ordered to a second reading to-morrow.

Mr Crawford called up the bill to be entitled an act to change the mode of printing and distributing the laws and journals of the General Assembly, and for other purposes. The bill was amended and ordered to be engrossed for a third reading to-morrow.

Mr Perry offered the following resolution: *Resolved*, That the committee on county boundaries be instructed to inquire into the expediency of dividing Dallas county in such manner that the Alabama river shall be the boundary line of the county or counties formed by such division; which was adopted.

Mr Powell presented the petition of sundry persons residing in Hill's Settlement, in relation to the boundary line between Tuscaloosa and Bibb counties; which was read and referred to the committee on county boundaries, to consider and report thereon.

An engrossed bill to be entitled an act to repeal in part an act, approved January 13, 1828, and for other purposes, was read the third time and ordered to lie on the table.

A bill to be entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named, was read a third time. *Ordered*, that the bill lie on the table, and that fifty copies thereof be printed for the use of the Senate.

An engrossed bill to be entitled an act more effectually to prevent judges of the circuit courts from charging juries on matters of fact, and the better to secure the right of trial by jury, was read the third time, and on the question being put, Shall the bill pass? it was determined in the affirmative. Yeas 12—nays 8.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Garth, Hubbard, Irwin, McVay, Moore of J. Perry, Skinner, Smith, Walcott, Watkins and Wood—12.

Those who voted in the negative are, Messrs. Abercrombie, Conner, Crawford, Merriwether, Moore of M. Pickett, Powell, Ross—8. So the bill was passed.

*Ordered*, that the title of the bill be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

A bill from the House of Representatives entitled, an act to authorize the Sheriff

or Coroner of Shelby, to sell lands or slaves levied on by execution, at the town of Shelbyville, was read the third time. Mr Crawford offered an amendment to the bill by way of rider, relating to the sale of lands, slaves and other property, by the Sheriff, Coroner or other officer of this county; which was read three several times and adopted. The bill as amended was then passed. Ordered, that the Secretary acquaint the House of Representatives therewith.

A bill to be entitled, an act to regulate and reduce the expenses of the General Assembly, was read the second time. Mr Abercrombie moved that the bill lie on the table till the first day in June next, which was lost. Years 6—Nays 14.

The yeas and nays being desired, those who voted in the affirmative are, Messrs Abercrombie, Irwin, Moore of Jackson, Perry, Pickett and Watkins. Those who voted in the negative are, Mr President, Connor, Crawford, Garth, Hubbard, McVay, Meriwether, Moore of St. Powell, Ross, Skinner, Smith, Walthall and Wood.

Mr Hubbard moved to amend the bill by striking out "five dollars," the amount proposed as per diem pay of the President of the Senate and Speaker of the House of Representatives, and to insert in lieu thereof "three dollars," and by striking out "three dollars," the pay of the members, and to insert in lieu thereof "two dollars?" which was lost. Years 7—Nays 13.

The yeas and nays being desired, those who voted in the affirmative are, Messrs Connor, Hubbard, Irwin, Perry, Ross, Skinner and Smith.

Those who voted in the negative are, Mr President, Abercrombie, Crawford, Garth, McVay, Meriwether, Moore of J. Moore of M. Pickett, Powell, Walthall, Watkins and Wood. Mr Smith moved to amend the bill, so as to fix the pay of the door keepers, at *three dollars* per day, the same as the members; which was lost. Mr Walthall moved to amend the bill by striking out "*two dollars*," the amount proposed for the pay of the door keepers, and insert in lieu thereof *three dollars* per day, and the question being put on striking out, it was carried. Mr Moore of Jackson, moved to fill the blank with *one dollar* per day as the pay of the door keepers; which was carried. Years 14—Nays 6.

The Yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Crawford, Garth, Hubbard, Irwin, Moore of J. Perry, Pickett, Ross, Skinner, Smith, Watkins and Wood. Those who voted in the negative are, Messrs Connor, McVay, Meriwether, Moore of St. Powell and Walthall.

Mr Smith moved to amend the bill, so as that it shall take effect, from and after the passage thereof, which was lost. Years 6—Nays 14.

The yeas and nays being desired, those who voted in the affirmative are, Messrs Connor, Garth, McVay, Ross, Smith and Walthall. Those who voted in the negative are, Mr President, Abercrombie, Crawford, Hubbard, Irwin, Meriwether, Moore of J. Moore of M. Perry, Pickett, Powell, Skinner, Watkins and Wood.

Mr Watkins moved, that the further consideration of the bill be indefinitely postponed, which was carried. Years 11—Nays 9.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Hubbard, Irwin, Moore of J. Perry, Pickett, Skinner, Smith, Watkins and Wood. Those who voted in the negative are, Messrs Connor, Crawford, Garth, McVay, Meriwether, Moore of M. Powell, Ross and Walthall.

A bill to be entitled, an act to emancipate a certain slave therein named, was read a second time and ordered to a third reading to-morrow.

A message from the House of Representatives by Mr. Ready: Mr President: the House of Representatives have adopted the following, in which they desire the concurrence of your honorable body. *Resolved*, That with the concurrence of the Senate, the two Houses will convene in the Representative Hall this day at three o'clock, for the purpose of electing a Senator to the Congress of the United States, for the term of six years from and after the fourth day of March next. Also a Secretary of State, Comptroller and Treasurer.

Mr Hubbard moved to amend the resolution, by striking out the words "this day at 3 o'clock," and inserting the words "to-morrow at three o'clock" which was lost.

Mr Abercrombie moved that the Senate concur in the resolution, which was carried. Years 16—Nays 4.

The yeas and nays being desired, those who voted in the affirmative are, Mr Pre-

sident, Abercrombie, Conner, Crawford, Garth, Irwin, cVay, erriwether, Moore of J. Moore of H. Perry, Powe H. Ross, Smith, W. Idrell and Watkins. Those who voted in the negative are, Messrs Hubbard, Pickett, Skinner and Wood—so the resolution was confirmed in. *Ordered*, That the Secretary acquaint the House of Representatives therewith.

A message from the House of Representatives by Mr. Tunstall their Clerk: Mr President—The House of Representatives have passed bills, which originated in the Senate entitled an act explaining the true intent and meaning of two acts therein named; an act for the relief of H. Garrard, tax collector of Lauderdale county; an act to authorize Lewis Tyos of Astanga county, to emancipate certain slaves therein mentioned—and have amended the same, by striking out of the 8th line of the second section, the words "eight hundred" and inserting in lieu thereof, the words "two thousand," in which amendment they desire your concurrence. They have passed bills which originated in their House, entitled, an act to authorize Clerk of the circuit courts to take bonds of Sheriffs and Clerks in certain cases; an act to lay in store and discharge the name of Nancy Steel, to that of Nancy Cook; an act to amend an act entitled an act to amend an act, incorporating the town of Huntsville, passed the 9th day of January, 1838; and an act to locate the seat of Justice in Henry county, and for other purposes in all of which they desire your concurrence.

*Ordered*, That the Senate concur in the amendment made by the House of Representatives, to the bill entitled an act to authorize Lewis Tyos, Astanga county, to emancipate certain slaves therein named. *Ordered* that the Secretary acquaint the House therewith.

At which time the Senate adjourned till 8 o'clock this evening.

*Three o'clock, P. M.*—The Senate not present to adjournment.

A message from the House of Representatives by Mr. Tunstall their Clerk: Mr President—The House of Representatives have adopted the following resolution, in which they desire your concurrence: *Resolved*, That the Senate be invited to assemble in the Hall of the House of Representatives, for the purpose of proceeding to the election of a Senator to the Congress of the United States, a Secretary of State, Comptroller and Treasurer: Whereupon, the members of the Senate repaired to the Hall of the House of Representative, and having taken the seats assigned them, Mr President arose and declared the object of their meeting:

When the two Houses proceeded to the election of a Senator to the Congress of the United States, for the term of six years from and after the fourth day of March next. The Hon. Wm. R. King alone being in nomination. For Mr King 100 yeas.

Those who voted for Mr King are, Messrs President, Abercrombie, Conner, Crawford, Garth, Hubbard, Irwin, McVay, Conner, Lee, Moore of J. Moore of M. Perry, Pickett, Powe H. Ross, Conner, Smith, Vinings, Walthall and Wood of the Senate; Ambrister, Anderson, Banks, Barker, Barnes, Barker, Bibb of L. Bibb of S., Bonnell, Branton, Briggs, Broadnax, Brown, Clark, Cawthon, Clark, Co. Colburn, Cook, Conner, and Dale, Duke, Dupuy, Durand, Edwards, Eason, Elmore, Fox, Gage, Gage, Harris, Hildreth, Hughes, Hudson, Lane, Lester, Lee, Lewis, Lister, Lawson, McQuay, Mosley, Mosley, Mumf, Noble, Moore, Archer, Parker, Parsons, Penn, Perkins, Perkins, Johnson, Rogers, Roberson, Sanders, Smith of J. Smith of L. Sykes, Tarver, Terry, Townsend of M. Townsend of P. Walker of D. Walker of M. Weisinger, Weissinger, W. Hubbard, Whitfield—99.

The Hon. Wm. R. King having received the requisite votes present was declared by Mr Speaker to be duly elected a Senator to the Congress of the United States for the term of six years from and after the fourth day of March next.

The two Houses then proceeded to the election of a Secretary of State for the State of Mississippi: James I. Thompson, Logan D. Brandon, John G. Alden and George W. Chubb being in nomination. The votes stood thus: Mr Thornton—40—Mr Brandon 10—Mr Alden 29—Mr Chubb 11.

Those who voted for Mr Thornton are, Messrs President, Abercrombie, Conner, Irwin, McVay, Moore of J. Moore of M. Perry, Powe H. Ross, Smith, Vinings, Walthall and Wood of the Senate; Mr Barker, Barton, Bibb of L. Broadnax, Cawthon, Cogus, Cook, Dale, Dupuy, Durand, Eason, Elmore, Gage, Harris, Lewis of M. Mosley, Mumf, Parsons, Perkins, Robinson, Rogers, Smith of L. Tarver, Terry, Townsend of M. Townsend of P. and Whitfield.

Those who voted for Mr Brandon are, Messrs McVay and Pickett of the Senate; Mr Speaker, Ambrister, Branton, Duke, Musgrove, Sanders, Walker of M. Weisinger and Whitfield.

Those who voted for Mr Alden are, Messrs Crawford, Hubbard, Moore of J. and Wat-



kings of the Senate; Mr Anderson, Banks, Belser, Bonnell, Bridges, Brown, Clark Clough, Cole, Coopwood, Foster, George, Hodges, Hudson, Lea, Lewis of F. Penn Pickens, Salter, Smith of J. Walker of D.

Those who voted for Mr Crabbe are Messrs Garth, Moore of M. Skinner of the Senate; Mr Bibb of M. Edmondson, Hill, Lawler, Mardis, Metcalfe, McElderry, Parker, Sykes and Wallis. No one of the candidates having received a majority of the whole number of votes, both Houses proceeded again to the election of a Secretary of State for the term of two years. The name of Logan D. Brandon being withdrawn—James I. Thornton, John G. Aikin and George W. Crabbe being in nomination.

Those who voted for Mr Thornton are, Messrs President, Abercrombie, Conner, Irwin, McVay, Merriwether, Perry, Powell, Ross, Smith, Vining, Walthall and Wood of the Senate; Mr Speaker, Barker, Barton, Bibb of L. Bonnell, Broadnax, Cawthon, Colgin, Cook, Dale, Dupuy, Durrett, Fearn, Flournoy, Gage, Harris, Lane, Lewis of M. Massey, Mims, Mobley, Parsons, Pickens, Robison, Rogers, Smith of L. Tarver, Terry Townsend of M. Townsend of P. and Whitfield—41.

Those who voted for Mr Aikin are, Messrs Crawford, Hubbard, Moore of J. Pickett and Watkins of the Senate; Mr Ambrister, Anderson, Banks, Belser, Brandon, Bridges, Brown, Clark, Clough, Cole, Coopwood, Duke, Foster, George, Hill, Hodges, Hudson, Leo, Lewis of F. Parker, Penn, Pickens, Salter, Sanders, Smith of J. Walker of D. Walker of M. Weissinger and Wellborne—34.

Those who voted for Mr Crabbe are, Messrs Garth, Moore of M. and Skinner of the Senate; Mr Bibb of M. Edmondson, Lawler, Mardis, Metcalfe, Musgrove, McElderry, Sykes and Wallis—12. None of the candidates having received a majority of the whole number of votes, both Houses again proceeded to the election of a Secretary of State—James I. Thornton and John G. Aikin being in nomination.

Those who voted for Mr Thornton are, Messrs President, Abercrombie, Conner, Garth, Irwin, McVay, Merriwether, Moore of M. Perry, Powell, Ross, Smith, Vining, Walthall and Wood of the Senate; Mr Speaker, Barker, Barton, Bibb of L. Bibb of M. Bonnell, Broadnax, Cawthon, Colgin, Cook, Dale, Dupuy, Durrett, Edmondson, Fearn, Flournoy, Gage, Harris, Lane, Lawler, Lewis of M. Mardis, Massey, Mims, Mobley, Musgrove, McElderry, Parsons, Perkins, Robison, Rogers, Smith of L. Sykes, Tarver, Terry Townsend of M. Townsend of P. and Whitfield—53.

Those who voted for Mr Aikin are, Messrs Crawford, Hubbard, Moore of J. Pickett, Skinner and Watkins of the Senate; Messrs Ambrister, Anderson, Banks, Belser, Brandon, Bridges, Brown, Clark, Clough, Cole, Coopwood, Duke, Foster, George, Hill, Hodges, Hudson, Lea, Lewis of F. Metcalfe, Parker, Penn, Pickens, Salter, Sanders, Smith of J. Walker of D. Walker of M. Wallis, Weissinger and Wellborne—37.

James I. Thornton having received a majority of the whole number of votes, Mr. Senke therefore declared him duly elected Secretary of State for the ensuing two years.

Both Houses then proceeded to the election of a Comptroller of Public Accounts. James Pickens being in nomination. Those who voted for Mr Pickens are, Messrs President, Abercrombie, Conner, Crawford, Garth, Hubbard, Irwin, McVay, Merriwether, Moore of J. Moore of M. Perry, Pickett, Powell, Ross, Skinner, Smith, Vining, Walthall, Watkins and Wood; Mr Speaker, Ambrister, Anderson, Banks, Barker, Barton, Belser, Bibb of L. Bibb of M. Bonnell, Brandon, Bridges, Broadnax, Brown, Clark, Cawthon, Clough, Cole, Colgin, Cook, Coopwood, Dale, Duke, Dupuy, Durrett, Edmondson, Fearn, Flournoy, Foster, Gage, George, Harris, Hill, Hodges, Hudson, Lane, Lawler, Lea, Lewis of F. Lewis of M. Mardis, Massey, Metcalfe, Mims, Mobley, Musgrove, McElderry, Parker, Parsons, Penn, Perkins, Pickens, Robison, Rogers, Salter, Sanders, Smith of J. Smith of L. Sykes, Tarver, Terry, Townsend of M. Townsend of P. Walker of D. Walker of M. Wallis, Weissinger, Wellborne and Whitfield.—Samuel Pickens having received the whole number of votes given, Mr Speaker therefore declared him duly and constitutionally elected Comptroller of Public Accounts for the ensuing twelve months.

Both Houses then proceeded to the election of a State Treasurer. John C. Perry being in nomination. Those who voted for Mr. Perry are, Messrs President, Abercrombie, Conner, Crawford, Garth, Hubbard, Irwin, McVay, Merriwether, Moore of J. Moore of M. Perry, Pickett, Powell, Ross, Skinner, Smith, Vining, Walthall, Watkins and Wood of the Senate; Messrs Speaker, Ambrister, Anderson, Banks, Barker, Barton, Belser, Bibb of L. Bibb of M. Bonnell, Brandon, Bridges, Broadnax, Brown, Clark, Cawthon, Clough, Cole, Colgin, Cook, Coopwood, Dale, Duke, Dupuy, Durrett, Edmondson, Fearn, Flournoy, Foster, Gage, George, Harris, Hill, Hodges, Hudson, Lane, Lawler, Lea, Lewis of F. Lewis of M. Mardis, Massey, Metcalfe, Mims, Mobley, Musgrove, McElderry, Parker, Parsons, Penn, Perkins, Pickens, Robison, Rogers, Salter, Sanders, Smith of J. Smith of L. Sykes, Tarver, Terry, Townsend of M. Townsend of P. Walker of D. Walker of M. Wallis, Weissinger, Wellborne and Whitfield.—John C. Perry having received all the votes given, Mr Speaker therefore declared him duly and con-

constitutionally elected Treasurer of the state of Alabama, for the ensuing twelve months.

The election being completed the Senate withdrew, returned to their own chamber, and the President resumed the chair.

When, on motion, the Senate adjourned till to-morrow morning at 10 o'clock,  
*Wednesday, 3d December, 1828.*

The Senate met pursuant to adjournment.

Mr. Skinner from the special committee to which was referred the petition of sundry citizens of the State of Alabama, in behalf of Henry S. Foote, reported a bill to be entitled an act for the relief of Henry S. Foote, which was read and ordered to a second reading to-morrow.

Mr. Irwin introduced a bill to be entitled an act to amend an act, passed at the last General Assembly, authorizing a lottery in Henry county and for other purposes, which was read and ordered to a second reading to-morrow.

Mr. Conner offered the following Resolution: *Resolved*, that the committee on schools and colleges, and school and college lands, be requested to ascertain and report to the Senate a statement showing the several contracts entered into by the board of trustees of the University of Alabama, for the erection of the buildings thereof, a description of the several edifices as contracted for; and also the progress made in the erection of said edifices, which was adopted.

Mr. Garth offered the following resolution: *Resolved*, that the judiciary committee be instructed to inquire into the expediency of so amending the existing law that errors in indictments shall be suggested to the court before the case is submitted to the jury, and after a jury has found a verdict, errors of the grand jury, solicitor or other officer shall not be suggested or taken advantage of; which was adopted.

Mr. Merriwether offered the following resolution: Whereas a large portion of the citizens of the county of Greene are labouring under the serious inconvenience and risk of crossing the Warrior River to attend their circuit and county courts, and at considerable risk and exposure from the great height to which the said river rises and length of time it continues high; and which inconvenience can never be done away except by making said river the boundary line. Be it therefore *Resolved*, that the committee on county boundaries be instructed to inquire into the expediency of so dividing the county as to make the Black Warrior river the boundary line; and report by bill or otherwise; which was adopted.

Mr. Hubbard introduced a bill to be entitled an act concerning costs in the Supreme Court, which was read and ordered to a second reading to-morrow.

Mr. Irwin offered the following Resolution: *Resolved*, that the judiciary committee be instructed to inquire into the expediency of authorizing by law the judges of the county courts to have and determine all contested elections for Senators and Representatives of the Legislature subject however to an appeal by either of the parties aggrieved at such decision to the proper branch of the Legislature—and requiring the judge to transmit all the testimony to the proper house; with leave to report by bill or otherwise; which was adopted.

A bill to be entitled an act to authorize clerks of the circuit courts to take bonds of sheriffs and coroners in certain cases, was read the second time, amended on Mr. Ross' motion, and referred to the committee on the judiciary—to consider and report thereon.

Bills from the House of Representatives entitled an act to legitimate and change the name Nancy Steel to Nancy Curl; an act to locate the seat of justice in Henry county and for other purposes; and, an act to amend an act entitled an act to amend the act, incorporating the town of Huatsville, passed the 9th day of January 1828, were severally read the first time and ordered to a second reading to-morrow.

A bill to be entitled an act to emancipate a certain slave therein named, was read the second time, and ordered to a third reading to-morrow.

A bill to be entitled an act to divorce Elizabeth S. Littlepage from Thomas W. Littlepage was read a second time and referred to the committee on divorce and alimony to consider and report thereon.

An engrossed bill to be entitled an act to change the mode printing and distributing the acts and journals of the General Assembly, and for other purposes, was read the

third time and passed. Ordered that the title of the bill be as aforesaid, and that it be sent to the House for their concurrence.

And then the Senate adjourned till 10 o'clock to-morrow.

*Thursday, 4th December, 1828.*

The Senate met pursuant to adjournment.

Mr. Perry from the committee on the judiciary to which was referred a bill to be entitled an act to authorize clerks of the circuit courts to take bonds of sheriffs and coroners in certain cases, reported the same as amended, which was concurred in. Ordered that the bill be made the order of the day for a third reading to-morrow.

Mr. Powell from the special committee to which was referred the petition of William Bryant, reported a bill to be entitled, an act authorizing the liberation of certain slaves; which was read and ordered to a second reading to-morrow.

Mr. Wadsworth introduced a bill to be entitled, an act to authorize Zachariah Holly to manumit certain slaves therein named; which was read and ordered to a second reading to-morrow.

A bill to be entitled an act to alter and change a certain part of the road leading from Florence in Lenoir county to Athens in Lenoir county, was read the second time, and ordered to be engrossed for a third reading to-morrow.

Bills from the House of Representatives, of the following title to wit: an act to emancipate a certain slave therein named; an act to divorce Clarissa Wade from George W. Wade; an act to divorce Hugh McVay from Sophia W. McVay, and an act to divorce Leroy Lewis from Mordican Lewis; were severally read the third time and passed by the requisite majority. Ordered that they be returned to the House of Representatives.

A bill to be entitled an act for the relief of Henry S. Foote, was read the second time and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act to amend an act passed at the last General Assembly, authorizing a lottery in Henry county and for other purposes, was read the second time and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act concerning costs in the supreme court, was read the second time and referred to the committee on the judiciary, to consider and report thereon.

A message from the House of Representatives by Mr. Tunstall their clerk:

Mr. President—The House of Representatives have passed a bill which originated in the Senate, entitled an act for the relief of John Balkcom. They have passed bills which originated in their house entitled an act to annex a part of the county of Edge to the county of Pike, and an act to authorize Claiborne Williams and associates to complete a road therein named, in which they desire your concurrence. They concur in the amendment made by the Senate to the bill entitled an act to authorize the Sheriff or Coroner of the county of Shelby to sell lands and slaves levied on by execution in the town of Moreyville, and have amended the amendment made thereto by Senate by inserting the words "levied on" in the 3d section, in which they desire your concurrence.

Ordered, that the Senate concur in the amendment made by the House of Representatives to their amendment to the bill entitled an act to authorize the sheriff or coroner of the county of Shelby to sell lands and slaves levied on by execution in the town of Moreyville. Ordered, that the Secretary acquaint the House of Representatives therewith.

Bills from the House of Representatives entitled an act to annex a part of the county of Edge to the county of Pike; and an act to authorize Claiborne Williams and associates to complete a road therein named, were severally read the first time and ordered to a second reading to-morrow.

A bill from the House of Representatives entitled an act to emancipate a certain slave therein named, was read the third time and passed. Ordered that the bill be returned to the House of Representatives.

Mr. Ross called up the bill to be entitled, an act to repeal in part an act approved Jan. 13 1828, and for other purposes, and offered an amendment to the same by way of rider, which was read three several times, and adopted—the bill was then passed. Ordered that the title be as aforesaid, and that the bill be sent to the House of Representatives for their concurrence.

Bills entitled an act to amend an act entitled an act to amend the act incorporating the town of Huntsville, passed the 9th day of January 1828; an act to locate the of justice in Henry county and for other purposes; and an act to legitimate and change the name of Nancy Steel to that of Nancy Curl, were severally read a second time and ordered to a third reading to-morrow.

Mr Conner offered the following resolution: *Resolved*, that by and with the consent of the House of Representatives the Senate will at the hour of 3 o'clock on to-morrow assemble in the Hall of the House of Representatives for the purpose of electing a Judge for the third judicial circuit of this state. Mr Abercrombie moved to amend the Resolution by adding thereto the words "and solicitor of the second judicial circuit," so as to elect the solicitor at the same time; which was carried. The resolution as amended was then rejected.

M. Hubbard called up the bill to be entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named. *Ordered*, that it be committed to a committee of the whole house and made the order of the day to-morrow.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Friday, December 5, 1828.*

The Senate met pursuant to adjournment.

Thomas Evans a Senator from the district composed of the counties of Wilcox and Marengo, appeared, produced his credentials, was qualified and took his seat.

Mr Pickett presented the petition of sundry inhabitants of Autauga county, praying that the seat of justice thereof may be continued at Washington in said county, which was read and *ordered* to lie on the table.

Mr Pickett also, presented a map of the county of Autauga, which was *ordered* to lie on the table.

Mr Garth from the committee on divorce and alimony to which was referred a bill to be entitled an act to divorce Elizabeth S. Littlepage from Thomas W. Littlepage, reported the same without amendment. *Ordered*, that the bill be made the order of the day for a third reading on to-morrow.

Mr Ross introduced a bill to be entitled an act for the relief of Joseph Bates; tax collector of Mobile county; which was read and *ordered* to a second reading on to-morrow.

Mr Smith introduced a bill to be entitled an act to extend the limits and alter the name of Clarke county; which was read and *ordered* to a second reading to-morrow.

Engrossed bills entitled an act to amend an act, passed at the last session of the General Assembly, authorizing a lottery in Henry county, and for other purposes; an act to alter and change a certain part of the road leading from Florence in Lauderdale county to Athens in Limestone county; and an act for the relief of Henry S. Foote, were severally read the 3d time and passed. *Ordered*, that the titles of the bills be as aforesaid, and that they be sent to the House of Representatives for their concurrence.

A bill to be entitled an act for the liberation of certain slaves, was read the second time. Mr Walthall offered the following amendment to the bill, "provided said slaves remove without this state within 12 months after their emancipation and not return therein," which was rejected. *Ordered*, that the bill be engrossed and made the order of the day for a third reading to-morrow.

A bill to be entitled an act to authorize Zachariah Holley to emancipate certain slaves therein named, was read a 2nd time, and amended on Mr Walthall's motion, and ordered to be engrossed for a third reading to-morrow.

A bill from the H. of R. entitled an act to legitimate and change the name of Nancy Steel to that of Nancy Curl, was read the third time and passed.

A bill to be entitled an act to annex a part of the county of Dale to the county of Pike, was read the second time and referred to the committee on county boundaries to consider and report thereon.

A bill to be entitled an act to amend an act entitled an act to amend an act incorporating the town of Huntsville, passed the 9th day of January, 1828, was read the third time and ordered to lie on the table.

A bill to be entitled an act to authorize Claiborn Williams and associates to turn

pike a road therein named, was read a second time and referred to the committee on roads, bridges and ferries, to consider and report thereon.

A bill to be entitled an act to locate the seat of justice in Henry county and for other purposes, was read the third time and passed. *Ordered*, that it be returned to the House of Representatives.

A bill to be entitled an act to authorize clerks of the circuit courts to take bonds of sheriffs and coroners in certain cases, was read the third time, as amended, and passed. *Ordered*, that the Secretary acquaint the House of Representatives therewith.

A message from the House of Representatives by Mr McClellan: Mr President, the House of Representatives have passed bills which originated in their House entitled an act for the relief sheriffs; an act to authorize Celia Burgess, a free woman of color, to emancipate her daughter Fanny; an act to establish the permanent seat of justice in Autauga county, and to provide for erecting the public buildings; an act for the relief of Andrew O. Horn, tax collector of Lawrence county; an act regulating the compensation of jurors in Pickens county; an act to authorize the building a Jail in Morgan county, and an act to repeal a certain act therein named. In all of which they desire your concurrence.

Bills from the House of Representatives entitled an act for the relief of sheriffs; an act to authorize Celia Burgess, a free woman of colour to emancipate her daughter Fanny; an act to establish the permanent seat of Justice in Autauga county, and to provide for erecting the public buildings; an act for the relief of Andrew O. Horn, tax collector of Lawrence county; an act regulating the compensation of jurors in Pickens county; an act to authorize the building a Jail in Morgan county; and an act to repeal a certain act therein named; were severally read the first time in the Senate, and ordered to a second reading to-morrow.

The Senate according to order, resolved itself into a committee of the whole, on the bill to be entitled an act to enable the State of Alabama to sell and dispose of certain lands therein named; Mr Garth in the chair, and after some time spent in the consideration thereof, the committee rose: Mr President resumed the chair, and Mr Garth reported that the committee of the whole had, had under their consideration, the bill to be entitled an act to enable the State of Alabama to sell and dispose of certain lands therein named; and not having time to go through therewith, have instructed him to report progress, and ask leave to sit again on Monday next, which was granted.

Mr Smith offered the following resolution: *Resolved*, That the Judiciary committee be instructed to inquire into the expediency of forming some general mode for the emancipation of slaves residing within the limits of this State, and report by bill or otherwise; which was adopted.

Mr McVay offered the following resolution: *Resolved*, That the committee on the lands donated by the General Government to the State be instructed to inquire into the expediency of making allowance to occupants on said lands for their improvements; which was rejected.

And then the Senate adjourned till to-morrow morning, at 10 o'clock.

*Saturday, December 6th, 1828.*

The Senate met pursuant to adjournment.

Mr Perry, from the committee on the Judiciary, to whom was referred a bill to be entitled an act prescribing the mode of contesting elections of certain officers, reported the same as amended; which was concurred in. *Ordered*, that the bill be engrossed and made the order of the day for a third reading on Monday next.

Mr Perry, from the same committee to whom was referred a resolution of the Senate, instructing them to inquire into the expediency of authorizing by law, the Judges of the county courts to hear and determine all contested elections for Senators and Representatives of the State Legislature, subject to an appeal by either party aggrieved, to the proper branch of the Legislature, reported that it is inexpedient to pass such a law; which was concurred in.

Mr Watkins, from the committee on privileges and elections to whom was referred the credentials of the several members, reported that the committee have examined the same, and find the following persons duly elected, to wit:

From the Senatorial District, composed of the counties of Mobile, Washington and Baldwin, Jack F. Ross; Monroe and Clarke, Neal Smith; Conecuh and Butler, John Watkins; Pike, Henry, Covington and Dale, William Irwin; Wilcox and Marengo, Thomas Evans; Perry, Richard Walthall; Dallas, Horatio G. Perry; Montgomery James Abercrombie; Bibb and Shelby, Thomas Crawford; St. Clair and Blount, David Conner; Madison, John Vining; Jackson, Samuel B. Moore; Lauderdale, Hugh McVay; Limestone, Nicholas Davis; Franklin, Theophilus Skinner; Morgan, Jesse W. Garth; Tuscaloosa, Leven Powell; Jefferson and Walker, John Wood; Pickens, Fayette and Marion, James Moore; Greene, Zachariah Merriwether; Autauga, William R. Pickett.

Mr Moore from the committee on enrolled bills, reported as correctly enrolled, an act explaining the intent and meaning of two acts therein mentioned; an act for the relief of Henry Garrard, tax collector of Lauderdale county, and an act for the relief of John Balksom, which were accordingly signed by Mr President.

Mr Powell introduced a bill to be entitled an act giving a summary remedy against securities in bonds, to keep the prison bounds in certain cases; which was read and ordered to a second reading on Monday next.

Mr Crawford offered the following resolution: *Resolved*, That the committee on county boundaries, be instructed to inquire into the expediency of extending the boundaries of Bibb county, so as to give said county its constitutional limits; which was adopted.

Mr Abercrombie presented the petition of sundry inhabitants of Monroe county, in opposition to the division of said county, making the Alabama river the dividing line; which was read and referred to the committee on county boundaries, to consider and report thereon.

Mr Smith presented seven different petitions of sundry inhabitants of Monroe county praying a division of said county, making the Alabama river the line; which were referred to the committee on county boundaries to consider and report thereon.

Mr Powell presented the account of Hiram P. Cochrane against the State, which was referred to the committee on accounts and claims.

Mr Vining called up the bill to be entitled an act to amend an act entitled an act to amend the act incorporating the town of Huntsville, passed the 9th day of January, 1828. Mr Vining then presented the petition of the mayor and aldermen of the town of Huntsville, praying the amendment proposed in the bill, and the petition and remonstrance of John Boardman against it, which were read. The question being put, shall the bill pass? it was determined in the affirmative. Ordered that the secretary acquaint the House of Representatives therewith.

Mr Skinner presented the account of Benjamin Hudson, sheriff of Franklin county against the State, which was referred to the committee on accounts and claims; Mr Skinner also presented the account of the jailor of Franklin county against the state, which was referred to the same committee.

Mr Walthall offered the following resolution: Whereas the seventeenth section of the fourth article of the constitution declares that the Legislature shall, at the session of 1828 or the first session thereafter, arrange and designate the boundaries of the several counties in this state—*Resolved* therefore that the committee on county boundaries inquire into the expediency of arranging and designating the boundaries of the several counties in this state, in pursuance of the said section of the constitution, at the present session, and that said committee report by bill or otherwise, which was adopted.

On motion of Mr Smith, ordered that Mr Evans be added to the committee on county boundaries.

Engrossed bills entitled, an act authorizing the liberation of certain slaves; and, an act to authorize Zachariah Holley to emancipate certain slaves therein named, were severally read the third time and passed. Ordered that the titles of the bills be as aforesaid, and that they be sent to the House of Representatives for their concurrence.

A bill to be entitled an act to divorce Elizabeth S. Littelpage from Thomas W. Littlepage, was read the third time and passed by the requisite majority. Ordered that the secretary acquaint the House of Representatives therewith.

A bill to be entitled an act to extend the limits and alter the name of Clarke county, was read the second time and referred to the committee on county boundaries to consider and report thereon.

A bill to be entitled an act for the relief of Joseph Bates, jr. tax collector of Mobile county, was read the second time and ordered to be engrossed for a third reading on Monday next.

A bill to be entitled, an act to establish the permanent seat of justice in Autauga county and to provide for erecting the public buildings was read the second time, and referred to the committee on propositions and grievances to consider and report thereon.

Mr Powell called up the several petitions presented yesterday by Mr Pickett on the subject of the seat of justice of Autauga county. Ordered, that they be committed to the committee on propositions and grievances to consider and report thereon.

A bill to be entitled an act to repeal a certain act therein named was read the second time and ordered to lie on the table.

Bills entitled an act for the relief of Andrew O. Horn, tax collector of Lawrence county; an act regulating the compensation of jurors in Pickens county; and an act to authorize Celia Burgess, a free woman of colour, to emancipate her daughter Fanny, were severally read the second time and ordered to a third reading on Monday next.

A bill to be entitled an act to authorize the building of a jail in Morgan county was read the second time and referred to a special committee, consisting of Messrs Garth, Vining and Watkins, to consider and report thereon.

A bill to be entitled an act for the relief of sheriffs was read the second time and referred to the committee on the judiciary to consider and report thereon.

Mr Ross offered the following resolution: *Resolved*, that the President of the State Bank be directed to lay before the Senate all the information on the following subjects, which may not be incompatible with the interest of the institution to communicate, to wit: all the correspondence had by said Bank or its committees with the Bank of Mobile relative to a negotiation between the two Banks, on the subject of receiving the paper of each other as specie, and the collection of the drafts belonging to the State Bank falling due in the city of Mobile, and all the propositions made by each Bank to the other on these subjects; also, all correspondence had by the State Bank with the Branch Bank of the United States at Mobile, on the subjects above alluded to, and all the propositions to or by the said Branch Bank on the subject of transacting the business of the State Bank in Mobile, and the terms upon which said Branch Bank has heretofore transacted the business of the State Bank; also, all resolutions passed by the Directors of the State Bank in relation to either of the Banks in Mobile, a copy or copies of which have been furnished the Bank or Banks, for which they were intended.

On motion of Mr Powell, *Ordered* that the resolution lie on the table till Monday next.

Mr Abernethy moved to take up the bill to be entitled an act to require the Governor to reside at the seat of Government, which was lost.

And then the Senate adjourned till Monday morning at 10 o'clock.

*Monday, 8th December, 1828.*

The Senate met pursuant to adjournment.

Mr Perry from the committee on the judiciary, to whom was referred a resolution on the subject, reported a bill to be entitled an act more effectually to secure trials in capital cases by impartial juries, which was read and ordered to a second reading to-morrow.

Mr Merriwether from the committee on roads, bridges and ferries, to which was referred a bill to be entitled an act to authorize Claibourn Williams and associates to turnpike a certain road therein named, reported the same as amended. The amendments proposed by the committee being further amended were concurred in. Ordered that the bill be made the order of the day for a third reading to-morrow.

Mr Powell presented the accounts of the jailer of Tuscaloosa county against the State, which was referred to the committee on accounts and claims.

Mr Pickett introduced a bill to be entitled an act concerning dower; which was read and ordered to a second reading to-morrow.

Mr Garth introduced a bill to be entitled an act to amend an act affixing salaries to certain officers within the state of Alabama; which was read and ordered to a second reading to-morrow.

Mr McVay offered the following resolution: *Resolved*, That the committee on the judiciary be instructed to inquire into the expediency of revising and consolidating the fees of justices of the peace and constables, with leave to report by bill or otherwise; which was adopted.

Mr Moore of Jackson offered the following resolution: *Resolved*, That the committee on the judiciary be instructed to inquire into the expediency of separating the offices of assessor and taxcollector. Mr Hubbard moved to amend the resolution by adding the words, "and also whether or not it may be considered expedient to dispense with the office altogether, so as to have that duty performed by magistrates and sheriffs;" which was lost. The question was then put on the adoption of the resolution as offered by Mr. Moore and determined in the negative.

Mr Walthall offered the following resolution: *Resolved*, That, with the concurrence of the House of Representatives, the Senate will assemble in the Representative Hall at 3 o'clock, p. m. on Thursday next, for the purpose of electing a judge for the third judicial circuit and a solicitor for the second circuit; which was adopted.

Mr Crawford offered the following resolution: *Resolved*, That the judiciary committee be instructed to inquire into the expediency of providing a summary mode of proceeding against assessors and taxcollectors, who fail to make returns of their assessments within the time required by law; and also into the expediency of requiring auctioneers to make returns to the comptroller of public accounts of all such monies as they may have collected on sales at auction, and paid over to the assessors and taxcollectors of their respective counties; which was adopted.

On motion of Mr Hubbard, *Ordered*, That the resolution offered by Mr Ross on Saturday last, calling upon the president and directors of the bank of the state of Alabama for certain information in relation to their transactions with the Mobile bank, and branch of the United States' bank at Mobile, lie on the table.

An engrossed bill to be entitled an act for the relief of Joseph Eates, jr. taxcollector of Mobile county, was read the third time and passed. *Ordered*, That the title of the bill be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

An engrossed bill to be entitled an act prescribing the mode of contesting the elections of certain county officers, was read the third time. Mr Walthall moved to fill the blank in the bill, relating to the compensation of the judge and commissioners of roads, &c. with the words "two dollars," as their pay for each day they are necessarily engaged in determining any contested election; which was carried. Yeas 12—Nays 10. The yeas and nays being desired.

Those who voted in the affirmative are, Mr President, Abercrombie, Conner, Crawford, Moore of M. Perry, Pickett, Powell, Ross, Skinner, Smith and Walthall.

Those who voted in the negative are, Messrs Evers, Garth, Hubbard, Irwin, McVay, Merriwether, Moore of J. Vining, Watkins and Wood.

The question was then put, Shall the bill pass? and determined in the affirmative. *Ordered*, That the title of the bill be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

A bill to be entitled an act to authorize Celia Burgess, a free woman of color, to emancipate her daughter Fanny; and an act regulating the compensation of jurors in Pickens county; were severally read the third time and passed. *Ordered*, That they be returned to the House of Representatives.

A message from the House of Representatives, by Mr Tunstall: Mr President, The House of Representatives have passed bills, which originated in their House, entitled an act to repeal in part a resolution entitled a resolution relative to the militia of this state, approved on the 13th day of Jan. 1827; an act to emancipate certain slaves therein named; and an act to alter and change the name of a certain person therein named: in which they desire your concurrence.

On motion, the Senate resolved itself into a committee of the whole on the bill to be entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named: Mr Garth in the chair; and after some time spent in the consider-



ration thereof the committee rose; Mr President resumed the chair, and Mr Garth reported that the committee of the whole, not having time to go through with the bill, had instructed him to ask leave to sit again on to-morrow; which was granted.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Tuesday, December 9, 1828.*

The Senate met pursuant to adjournment.

Mr Perry, from the committee on the judiciary, to whom was referred resolutions on the subject, reported a bill to be entitled an act to prevent extortion by public officers and for other purposes; which was read and ordered to a second reading to-morrow.

Mr Abercrombie, from the committee on county boundaries, to whom was referred a bill to be entitled an act to annex a part of the county of Dale to the county of Pike, reported the same without amendment. *Ordered*, That the bill be made the order of the day for the third reading on to-morrow.

Mr Abercrombie, from the same committee, to whom was referred a resolution of the Senate instructing them to inquire into the expediency of arranging and designating the boundaries of the several counties in this state, in pursuance of the 17th section of the 4th article of the constitution, at the present session, reported that it is inexpedient to arrange and designate the boundaries of the several counties at the present session. *Ordered*, That the report lie on the table.

Mr Abercrombie, from the same committee, to whom was referred a bill to be entitled an act to extend the limits and alter the name of Clarke county, reported the same as amended; which was concurred in. Mr Smith moved that the bill be engrossed and made the order of the day for a third reading to-morrow; which was carried. Yeas 21—Nays 1. The yeas and nays being desired,

Those who voted in the affirmative are, Mr President, Abercrombie, Conner, Crawford, Evans, Garth, Hubbard, Irwin, McVay, Merriwether, Moore of J. Moore of M. Perry, Pickett, Powell, Ross, Skinner, Smith, Vining, Walthall and Wood.

Mr Watkins voted in the negative.

The following communication was received from the Governor, by Mr Thornton, Secretary of State:

EXECUTIVE DEPARTMENT, TUSCALOOSA, DEC. 8, 1828.

The Hon. the President and Members of the Senate:

Gentlemen—I have the pleasure to transmit you the report of the Attorney General, and of the assistant counsel, in the case of the St Stephens Steamboat Company, directed at the last session of the supreme court of the state, together with a transcript of the proceedings.

I take this occasion also to give you official notice, as a matter of form, of the vacancy in the office of the Solicitor in the 5th judicial circuit, occasioned by the lamented decease of J. M. M. White, the promising and greatly respected officer who lately filled it. I have the honor to be, most respectfully, your obedient servant.

JOHN MURPHY.

*Ordered*, That the communication, together with the accompanying documents, lie on the table.

The following communication was also received by Mr Thornton:

EXECUTIVE DEPARTMENT, DECEMBER 8, 1828.

The Hon. the President and Members of the Senate:

Gentlemen—The commissioners, authorized by the act of the last session, to obtain for the state a loan of \$100,000, employed Dr Thomas Casey and the Hon David Hubbard, or either of them, as agents on their part to negotiate the loan. Dr Casey set out for the northern cities, as soon as he could make the necessary arrangements, and finding it impossible at the period of his arrival to effect the loan, on account of the peculiar pressure in the money market, which various circumstances had combined to produce, he thought it his duty to consult the interests of the state by his return, when there was no immediate prospect of effecting the object of his agency. The Hon David Hubbard who had contemplated, at the time of his being appointed an agent, to visit the northern cities, in the spring or early part of the summer, was forced by circumstances to decline his intention, and gave early notice to the commissioners, upon which John J. Crocheron, Esq. of Cahawba, was ap-

pointed agent, and attended to the subsequent part of the negotiation. The documents herewith transmitted will do honor to the zeal, the ability, and liberal public spirit of the agents. Mr Crocheron declines to make any charge for his zealous and repeated efforts, and Dr Casey only asks indemnity for the time which was actually spent in the exclusive business of endeavoring to obtain the loan. I am unable to make with confidence, at the present moment, any particular recommendation on the subject of the proposed loan, but the course which ought to be pursued will be dictated by circumstances. It is probable that we can obtain the loan with great facility, if we should continue to seek it; but if the causes which induced us to authorize it have passed away, or if other expedients may be rendered equally effectual, it would be consistent with the dignity of a prosperous and thriving state to retire, at present, from a market in which we lately applied for accommodation without success. I have the honor to be, very respectfully, your obedient servant.

JOHN MURPHY.

*Ordered*, That the communication, together with the accompanying documents, lie on the table.

A message from the House of Representatives, by Mr McClellan: Mr President, the House of Representatives concur in the amendments made by the Senate to the bill entitled an act to authorize clerks of the circuit courts to take bonds of sheriffs and coroners in certain cases, except one, and have amended the first amendment made thereto by the Senate by inserting after the words "assessors and tax-collectors," the word "thereafter": in which they desire your concurrence. They disagree to the amendment made by the Senate to the bill by adding thereto section No. 6. They concur in the amendment made by the Senate to the bill by adding section No 7, and have amended that amendment in the manner herewith shown: in which they desire your concurrence. They have passed bills which originated in their House entitled an act to authorize the judge of the county court and commissioners of revenue and roads of the county of Perry to make a certain appropriation therein named; and an act to change the names of certain persons therein named and to legitimate the same: in which they ask your concurrence.

The Senate resumed, in committee of the whole, the consideration of the bill to be entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named: Mr Garth in the chair; and after some time spent therein the committee rose; Mr President resumed the chair, and Mr Garth reported that the committee of the whole had made sundry amendments to the bill; all of which were concurred in. *Ordered*, That the bill be engrossed and made the order of the day for a third reading on to-morrow.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Wednesday, December 10, 1828.*

The Senate met pursuant to adjournment.

Mr Irwin from the military committee to which was referred a resolution instructing them to inquire into the expediency of exempting from patrol duty all persons who do not own slaves, with the exemption also, of such persons as are engaged as overseer of any slave or slaves; also, to inquire into the expediency of pointing out a different mode of appointing patrols by placing that power in the two justices of the peace in each captain's company, &c. reported that it is inexpedient to make the alterations in the present law proposed in the resolution. *Ordered*, that the report lie on the table.

Mr Irwin from the same committee to which was referred a resolution of the Senate submitted the following report: "The military committee of the Senate make the following report on a resolution instructing them to inquire and ascertain what number and description of public arms belonging to the state now remain on hand, and what is the condition of the arms, what number and description of the arms have been distributed since the last session of the General Assembly, to whom, and to what section of the state. The arms which have been distributed during the present year are as follows, to wit: 50 muskets and accoutrements and 48 sabres to the Hon Wm. H. Duke, in Marion county; 50 sabres to Capt Robert Taylor, of Clark county; 80 sabres to Capt Bradford in Madison county; 70 sabres and 18 pistols to Capt Hardie, in Perry county; 50 sabres to Capt Thos. Cummings, in Tusca-

loosa county; 60 artillery swords to Capt Foster, in Marion county; 40 sabres to Capt Hodges in Franklin county; 80 pistols to John G. Aikin for Col Aikin's regiment in Madison county; and 150 muskets and accoutrements sent to Mobile under the act of the last session. The remaining balance now in the arsenal, to wit: 883 muskets, 890 bayonets, 272 cartridge boxes, 325 belts for cartridge boxes, 192 bayonet belts, 120 rifles, 120 powder flasks, 120 shot bags, 3 lbs balls and shot, 9 holsters, 2 screwdrivers, 200 sabres for cavalry, 226 sabre belts, and 60 artillery swords. The arms and accoutrements now in the arsenal, your committee find to be in very good order. The vigilant attention and diligence of the Quartermaster General has received their entire approbation.

Mr Perry, from the committee on the judiciary, to which was referred a bill to be entitled an act for the relief of sheriffs, reported the same with an amendment, which was disagreed to. *Ordered*, that the bill be made the order of the day for a third reading to-morrow.

Mr McVay, from the committee on propositions and grievances, to which was referred a bill to be entitled an act to establish the permanent seat of justice in Autauga county, and to provide for erecting the public buildings, reported the same without amendment. Mr Perry moved that the further consideration of the bill be indefinitely postponed; which was carried.

Mr. Perry, from the committee on the judiciary, to which was referred a resolution instructing them to inquire into the expediency of repealing so much of an act, passed Jan. 14, 1826, as requires the judges of the circuit courts to preside successively in every circuit in the state, reported a bill to be entitled an act to repeal so much of an act, passed Jan. 14, 1826, as requires the judges of the circuit courts to preside successively in every circuit in this state; which was read and ordered to a second reading on to-morrow.

Mr Abercrombie, from the special committee to which was referred a bill to be entitled an act to prevent persons being sued in civil cases before justices of the peace out of the company beat in which they permanently reside, reported the same as amended; which was disagreed to. Mr Moore of J. moved to amend the bill by adding the words, "except in the beat where the contract was made, by virtue of which the defendant is liable to be sued;" which was carried. Mr Ross offered the following amendment to the bill: *Be it further enacted*, That the provisions of this act shall not extend to or be in force in the city of Mobile. Mr Irwin moved that the bill, together with the proposed amendment, lie on the table till to-morrow; which was carried.

Mr McVay offered the following resolution: *Resolved*, That the committee on the judiciary be instructed to inquire into the expediency of authorizing justices of the peace with a jury to try cases of affrays and assaults and batteries, with leave to report by bill or otherwise; which was adopted.

On motion of Mr Camer, ordered that the Senate concur in the first amendment made by the House of Representatives to their amendment, to the bill to be entitled an act to authorize clerks of the circuit courts to take bonds of sheriffs and coroners in certain cases ordered that the Senate recede from their amendment to said bill, by adding thereto the 6th section; ordered that they concur in the amendment made by the House to their amendment, by adding the 7th section to the bill. *Ordered*, That the Secretary, acquaint the House of Representatives therewith.

Bills from the House of Representatives, entitled an act to authorize the Judge of the county court and commissioners of Revenue and Roads, of the county of Perry, to make a certain appropriation therein named; an act to change the names of certain persons therein named, and legitimate the same; an act to emancipate certain slaves therein named; an act to alter and change the name of a certain person therein named; and an act to repeal in part a resolution entitled a resolution, relative to the militia laws of this State, approved 13th January 1827; were severally read the first time and ordered to a second reading on to-morrow.

An engrossed bill to be entitled an act to extend the limits of Clarke county; was read the third time and passed. *Ordered* that the title of the bill be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

An engrossed bill to be entitled an act to enable the State of Alabama to sell

and dispose of certain lands therein named, was read the third time. Mr McVay moved to fill the blank in the first section of the bill, with the "*town of Florence*," as the place where the Register and Receiver of the Land Office shall establish their offices; which was lost. Mr Hubbard moved to fill the blank with "*Courtland*," as the place for the location of the offices of Register and Receiver; which was carried. Mr Smith moved to fill the blank in the 17th section of the bill, with "twelve hundred and fifty dollars," as the annual salary of the Register of the Land Office established by the bill. Mr Ross moved to fill the blank with "fifteen hundred dollars," as the salary of the Register; which was lost. Yeas 9—nays 13.

The yeas and nays being desired, those who voted in the affirmative are, Mr. President, Abercrombie, Crawford Hubbard, Irwin, Perry, Pickett, Ross, Watkins.

Those who voted in the negative are, Messrs Conner, Evans, Garth, McVay, Merriwether, Moore of J. Moore of M. Powell, Skinner, Smith, Vining, Walthall, Wood.

The question was then put on Mr Smith's motion, to fill the blank with "twelve hundred and fifty dollars," as the salary of the Register, and determined in the negative. Yeas 11—nays 11.

The yeas and nays being desired. Those who voted in the affirmative are, Mr President, Abercrombie, Crawford, Hubbard, Irwin, Perry, Pickett, Ross, Smith, Walthall and Watkins.

Those who voted in the negative are, Messrs. Conner, Evans, Garth, McVay, Merriwether, Moore of J. Moore of M. Powell, Skinner, Vining and Wood.

Mr Hubbard moved to fill the blank with "twelve hundred dollars," as the salary of the Register; which was lost. Mr Smith moved to fill the blank with "eleven hundred dollars," which was lost. Mr. Garth moved to fill the blank with "one thousand dollars," as the salary of the Register; which was carried. Mr Garth then moved to fill the second blank in the 17th section of the bill with "one thousand dollars," as the annual salary of the Receiver. Mr Smith proposed "fifteen hundred dollars," as the salary of the Receiver; which was rejected. The question was then put on Mr Garth's motion, to fill the blank with "one thousand dollars," as the salary of the Receiver, and carried. Mr Smith moved to fill the 3rd blank in the 17th section of the bill, with "*four dollars*," as the per diem pay of the Commissioners to be elected to examine, class and value the lands, and with a like sum for every thirty miles travelling, going to and returning from the land office to their respective places of residence; which was lost. Mr Watkins moved to fill the blank with "three dollars," as the per diem pay of the Commissioners, and with a like sum for every thirty miles travelling, going to and returning from the land office to their respective places of abode; which was carried.

Mr Garth moved the following resolution: *Resolved*, That the bill to be entitled an act to enable the State of Alabama to sell and dispose of certain lands therein named, be referred to the committee that brought it in; with instructions to strike out the maximum to the first class of lands under the 12th section of the bill, and that they insert a section directing a sale after pre-emption rights are taken; which was rejected. Mr Perry offered the following amendment to the bill, by way of rider: *Sec.—And be it further enacted*. That it shall be the duty of the Register to furnish the Comptroller of Public Accounts quarterly, with an abstract of the public lands, shewing the number of acres sold, when; to whom and at what price. *And be it further enacted*, That if the Receiver shall fail to perform any of the duties required of him by this act, it shall be the duty of the Comptroller to cause the Solicitor of the proper circuit, to proceed by motion in the circuit court of the county where said office shall be situated, against said receiver, and his securities in office, for any such neglect or failure of duty in not paying over money by him received; and if it shall appear to the court that said Receiver has failed to pay over any money by him received, it shall be the duty of the court to give judgment against said Receiver and his securities, for such sum or sums as he may be in default: *Provided*, said Receiver shall have had three days notice in writing of said motion, and the court before whom any such motion may be made, shall receive the Registers certificate as evidence of the amount received; which was read three several times and adopted. Mr Walthall offered the following amendment to the 11th section of the bill by way of rider. *Provided*, the Commissioners shall have valued each fourth

of the quarter section separately, which shall be done, when required by the occupant by said Commissioners at the time of selecting and valuing said land; which was read three several times and adopted. Mr Crawford offered the following amendment to the bill by way of rider: Sec.—*And be it further enacted*, That neither the Register nor Receiver nor any of the Commissioners appointed to class and value said lands shall be concerned, either directly or indirectly, in the purchase of any of the said relinquished lands, except the pre-emptions given by the previous sections of the act; and if any such purchase shall be made the payment which shall have been made thereon, together with the lands shall be forfeited to the State, and shall be resold as other forfeited lands; which was rejected. Yeas 8—nays 14

The yeas and nays being desired, those who voted in the affirmative are, Messrs Abercrombie, Crawford, Garth, Moore of J. Moore of M. Perry, Vining, and Walthall.

Those who voted in the negative are, Mr President, Conner, Evans, Hubbard, Irwin, McVay, Merriwether, Pickett, Powell, Ross, Skinner, Smith, Watkins and Wood

Mr. Powell offered the following amendment to the bill by way of rider: Sec.—*And be it further enacted*, That neither the Register nor Receiver, shall be concerned either directly or indirectly in the purchase of any of said relinquished lands, except the pre-emptions given by the previous sections of this act, and if any such purchase shall be made the payment which shall have been made thereon, together with the lands shall be forfeited to the State, and shall be resold as other forfeited land; which was read three several times and adopted. Yeas 16—nays 6

The yeas and nays being desired, those who voted in the affirmative are, Messrs Abercrombie, Conner, Crawford, Evans, Garth, Hubbard, Irwin, McVay, Perry, Pickett, Powell, Skinner, Smith, Vining, Walthall and Wood

Those who voted in the negative are, Mr President, Merriwether, Moore of J. Moore of M. Ross and Watkins.

The question was then put, "shall the bill pass?" and determined in the affirmative. Yeas 21—nays none.

The yeas and nays being desired. Those who voted in the affirmative are, Mr. President, Abercrombie, Conner, Crawford, Evans, Garth, Hubbard, Irwin, McVay, Merriwether, Moore of M. Perry, Pickett, Powell, Ross, Skinner, Smith, Vining, Walthall, Watkins and Wood. So the bill was passed. Ordered that the title of the bill be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Thursday, December 11, 1828.*

The Senate met pursuant to adjournment.

Mr. Moore of J. asked, and obtained leave to record his vote on the passage of the bill to be entitled an act to enable the State of Alabama to sell and dispose of certain lands therein named, and being called, voted in favour of the passage of the bill.

Mr Powell presented the petition of sundry inhabitants of Tuscaloosa county, praying the establishment of certain election precincts; which was ordered to lie on the table.

Mr Vining presented the accounts of Fielding M. White, Jailer of Madison county, against the State; which were referred to the committee on accounts and claims.

Mr Conner offered the following resolution: *Resolved*, That a select committee be appointed to inquire into the expediency of memorializing the Congress of the United States, for the purpose of procuring a donation of the unappropriated lands in this State, to connect the waters of the Tennessee and Coosa rivers by a canal. Mr Powell moved to amend the resolution by adding the words "and also to connect the waters of the Tennessee and Tombigbee rivers," which was carried. The Resolution as amended was then adopted. Whereupon, Messrs Conner, Hubbard, Perry, Powell and Watkins were appointed the committee.

Mr Evans offered the following resolution: *Resolved*, That the committee on county boundaries be instructed to inquire into the expediency of so changing the limits of Wilcox county, as to make the Alabama river the western boundary line, and to annex the present limits of said county on the west side of the river, to the counties of Marengo and Clark; which was adopted.

Mr Powell moved to take up the bill to be entitled an act to require the Governor to reside at the seat of Government; which was lost.

A bill to be entitled an act for the relief of Sheriffs, was read the third time and passed. Ordered that it be returned to the House of Representatives.

A bill to be entitled an act to authorize Claiborn Williams and his associates, to turnpike a certain road therein named, was read the third time and amended by way of rider, on Mr Hubbard's motion. The question was then put "shall the bill pass?" and determined in the negative. Yeas 9—nays 11.

The yeas and nays being desired, those who voted in the affirmative are, Mr. President, Conner, Crawford, Hubbard, Moore of J. Perry, Skinner, Vining and Wood.

Those who voted in the negative are, Messrs Evans, Garth, Irwin, McVay, Merriweather, Moore of M. Pickett, Powell Smith, Walhall and Watkins.

A bill to be entitled an act for the relief of Andrew O. Horn, tax collector of Lawrence county; and an act to annex a part of the county of Dale, to the county of Pike; were severally read the third time and passed. Ordered that they be returned to the House of Representatives.

A bill to be entitled an act giving a summary remedy against securities in bonds to keep the prison bounds in certain cases, was read the second time. Mr. Perry offered the following amendment to the bill. *And be it further enacted, That the jails of each county shall hereafter be the prison bounds of said county.* Ordered that the bill, together with the proposed amendment, be referred to the committee on the Judiciary, to consider and report thereon.

A bill to be entitled an act concerning dower, was read the second time and referred to the committee on the judiciary, to examine and report thereon.

A bill to be entitled an act fixing salaries to certain offices within the State of Alabama, was read the second time. Mr Garth moved that the bill be referred to the committee on the judiciary, to consider and report thereon; which was lost. Mr Watkins moved that the further consideration of the bill be indefinitely postponed; which was carried.

A bill to be entitled an act to prevent extortion by public officers, and for other purposes, was read the second time. Mr Evans moved to amend the bill by providing, that no person shall hold the office of Sheriff and county Treasurer at the same time; which was carried. Ordered that the bill be engrossed and made the order of the day for the third reading to-morrow.

A bill to be entitled an act, more effectually to secure trials in capital cases by impartial juries, was read the second time and ordered to lie on the table till Saturday next.

A bill to be entitled an act to repeal so much of an act, passed January 14th, 1826, as requires the Judges of the circuit courts to preside successively in every circuit in the State, was read the second time. Mr Perry moved that the bill lie on the table till the first day of the next session; which was carried.

A bill to be entitled an act to authorize the judge of the county court and commissioners of roads and revenue of the county of Perry to make a certain appropriation therein named; an act to change the names of certain persons therein named and legitimate the same; and an act to alter or change the name of a certain person therein named—were severally read the second time and ordered to a third reading to-morrow.

A bill to be entitled an act to emancipate certain slaves therein named, was read the second time. Mr Powell presented the petitions of Solomon Pertete and Zadock Love, praying the emancipation of the slaves mentioned in the bill; which, together with the bill, were referred to a special committee, consisting of messrs Powell, Vining and Pickett, to consider and report thereon.

A bill to be entitled an act to repeal in part a resolution entitled a resolution relative to the militia of this state, approved Jan. 13, 1827, was read the second time and referred to the military committee to consider and report thereon.

Mr Abernethie offered the following resolution: *Resolved, That the committee on county boundaries be instructed to inquire into the expediency of attaching so much of Dallas and Wilcox counties to the county of Montgomery as will give ter-*

ritory enough to form two constitutional counties out of Montgomery, with leave to report by bill or otherwise; which was adopted.

Mr Watkins offered the following resolution: *Resolved*, that the judiciary committee be instructed to inquire into the expediency of extending and continuing in force the provisions of an act, passed January 15, 1828, providing for the sale of the 16th sections, which was adopted.

On motion of Mr Powell, ordered, that Mr Merrewether have leave of absence for the remainder of this week after to-day.

*Ordered*, that Mr Walthall have leave of absence for the remainder of this week. And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Friday, December 12, 1828.*

The Senate met pursuant to adjournment.

Mr Perry from the committee on the judiciary to which was *referred* a bill to be entitled an act concerning costs in the supreme court, *reported* the same as amended which was concurred in. The bill was further amended on Mr Hubbard's motion, and ordered to lie on the table till to-morrow.

Mr Perry from the same committee to which was *referred* the resolution directing them to inquire into the expediency of framing some general law for the emancipation of slaves residing in this state, *reported*, that it is inexpedient to pass such law; which was concurred in.

Mr Perry from the same committee to which was referred the resolution directing them to inquire into the expediency of allowing appeals on writs of error in criminal cases, *reported* that it is inexpedient in the opinion of the committee to pass such a law. *Ordered*, that the report lie on the table.

A message from the House of Representatives, by Mr Tunstall, their Clerk: Mr President—The House of Representatives have passed a bill which originated in the Senate, entitled an act for the relief of Henry S. Foote.

Mr Abercrombie from the committee on county boundaries to which was *referred* the petitions of sundry inhabitants of Monroe county on the subject of a division of said county so as to make the Alabama river the boundary line, asked to be discharged from the further consideration thereof, the subject having been acted upon, which was agreed to.

An engrossed bill to be entitled an act to prevent extortion by public officers, and for other purposes, was read the third time and passed. *Ordered*, that the title of the bill be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

Bills from the House of Representatives, entitled an act to authorize the judge of the county court and commissioners of revenue and roads of the county of Perry to make a certain appropriation therein named; an act to change the names of certain persons therein named and legitimate the same; and an act to alter or change the name of a certain person therein named, were severally read the third time and passed. *Ordered*, that they be returned to the House of Representatives.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Saturday, December 13, 1828.*

The Senate met pursuant to adjournment.

Mr McVay presented the petition of sundry inhabitants of Lauderdale county, praying an alteration in the present county court system, so as to have quarterly terms for the trial of causes; which was referred to the committee on the judiciary to consider and report thereon.

Mr Powell introduced a bill to be entitled an act to amend an act entitled an act to incorporate the town of Tuscaloosa, approved January 12, 1828; which was read and ordered to a second reading on Monday next.

Mr Abercrombie offered the following resolution: *Resolved*, that the judiciary committee be instructed to inquire into the expediency of extending civil and criminal jurisdiction over all Indian territory within the chartered limits of this state; which was adopted.

A message from the House of Representatives, by Mr. McClellan: Mr. President, the House of Representatives have passed a bill which originated in their House entitled an act making an appropriation in part for the payment of the members of the General Assembly; in which they desire your concurrence.

A bill from the House of Representatives, entitled an act making an appropriation in part for payment of the members of the General Assembly, was read the first time; and the rule requiring bills to be read on three several days being dispensed with by four fifths of the members, the bill was read the second and third time forthwith and passed. *Ordered*, that it be returned to the House of Representatives.

Mr Moore of J. from the committee on enrolled bills, reported as correctly enrolled, an act to authorize Lewis Tyus, of Autauga county, to emancipate certain slaves therein named; an act relating to penal statutes; and, an act to authorize clerks of the circuit courts to take bonds of sheriffs, assessors, tax collectors and coroners in certain cases; all of which were accordingly signed by Mr President.

*Ordered*, that the bill to be entitled an act more effectually to secure trials in capital cases by impartial juries, lie on the table till Monday next.

A bill to be entitled an act concerning costs in the supreme court, was read the second time. Mr Powell offered the following amendment to the bill: *Sec.—And be it further enacted*, that if any judgment for error as aforesaid, shall be reversed in the supreme court, it shall and may be lawful for the clerk of the said court to issue execution against the attorney or attorneys of record in the court below for all costs incurred by the plaintiff in error in correcting any such false judgement, provided, the same cannot be made out of the unsuccessful party; which was rejected. *Ordered*, that the bill be engrossed, and made the order of the day for a third reading on Monday next.

Mr Moore of J. introduced a bill to be entitled an act the better to secure impartial trials by juries in certain cases; which was read and ordered to a second reading on Monday next.

Mr Evans offered the following resolution: *Resolved*, that the judiciary committee be instructed to inquire into the expediency of abolishing the jurisdiction of county courts, and of establishing a court of ordinary, with leave to report by bill or otherwise; which was adopted.

And then the Senate adjourned till Monday morning, at 10 o'clock

*Monday, December 15, 1828.*

The Senate met pursuant to adjournment.

Mr Perry from the committee on the judiciary to which was referred a bill to be entitled an act concerning dower, reported the same as amended; which was concurred in. *Ordered* that the bill be engrossed and made the order of the day for the third reading on to-morrow.

Mr Perry from the same committee to which was referred a bill to be entitled an act giving a summary remedy against securities on bonds to keep the prison bounds in certain cases, reported the same without amendment.

The question was then put on the adoption of the amendment heretofore offered by Mr Perry to the bill making the limits of each county the prison bounds thereof, and determined in the affirmative. *Ordered*, that the bill be engrossed and made the order of the day for the third reading on to-morrow.

Mr Perry introduced a bill to be entitled an act to incorporate the Valley Creek Academy, in the county of Dallas; which was read and ordered to a second reading on to-morrow.

Mr Evans offered the following resolution: *Resolved*, that the judiciary committee be instructed to inquire into the expediency of requiring by law, the solicitors to attend the Legislature as assistant and engrossing clerks, and that they have leave to report by bill or otherwise; which was adopted.

A message from the House of Representatives by Mr McClellan:—Mr President, The House of Representatives have passed a bill which originated in the Senate, entitled an act to amend an act, passed at the last session of the General Assembly, authorizing a lottery in Henry county, and for other purposes, and have amended the same in the manner herewith shewn. In which they desire your concurrence. They have passed bills which originated in their House entitled an act to legitimate and change the name of Preston Newberry to Preston Moore, and for other purposes; an act to divorce Matilda S. Chunn from Launcelott Chunn; an act to reduce into one the several acts giving fees to justices of the peace and constables and for other purposes; in all of which they desire your concurrence.



Bills from the House of Representatives entitled an act to legitimate and change the name of Preston Newberry to Preston Moore, and for other purposes; an act to divorce Matilda S. Chunn from Launceott Chunn, and an act to reduce into one the several act giving fees to justices of the peace and constables, and for other purposes, were severally read the first time and ordered to a second reading on to-morrow.

A message from the Governor, by Mr Thornton: Mr President, I am instructed by the Governor to inform your honorable body that he did on the 12th instant approve and sign an act for the relief of John Balksom; an act for the relief of Henry Garrard, tax collector of Lauderdale county, and an act explaining the true intent and meaning of two acts therein mentioned; all of which originated in the Senate.

Mr Perry introduced a bill to be entitled an act to locate the University of the State of Alabama at Davis's in Autauga county, which was read. Mr. Powell moved that the bill lie on the table till the first day of August next, which was lost. Ordered that it be made the order of the day for the second reading on to-morrow.

Mr McVay offered the following preamble and resolution: Whereas, it is to the interest of the American Republic to diffuse the blessings of education throughout the whole population of the country, and in order that this may be done, it is necessary to bring the means of education as convenient as possible to every section of the country; and whereas, it is not necessary to the unity of a literary institution that it should be confined to one place, but the division of the same into different branches, having different and distinct locations, would best conduce to the object of its establishment; and whereas, the site selected will be of less public utility than if two branches of the same were established, one in the northern, and the other in the southern part of the State, thereby giving as well to the poor as to the rich the opportunity of a liberal education. Therefore, be it *Resolved* that the committee on schools and colleges, and school and college lands, be instructed to inquire into the expediency of establishing two branches of the University, the one to be located in the Tennessee Valley, and the other be located in the county of Autauga, or some other eligible place in the south, and that they report by bill or otherwise; which was adopted.

Mr Garh offered the following Resolution: *Resolved* that the committee on the State Bank be instructed to inquire into the expediency of setting apart such portion of the general accommodation as they may think the situation of the Bank will authorize to be discounted to individuals for the purpose of encouraging domestic manufactories in such manner as they may think expedient. On motion of Mr Hubbard, ordered that the resolution lie on the table.

Mr Moore of Jackson, from the committee on enrolled bills, reported as correctly enrolled an act making an appropriation in part for the payment of the members of the General Assembly; which was accordingly signed by Mr President.

An engrossed bill to be entitled an act concerning costs in the supreme court was read the third time and passed. Ordered that the title of the bill be as aforesaid and that it be sent to the House of Representatives for their concurrence.

A bill to be entitled an act the better to secure impartial trials by juries, was read the second time. Mr Pickett moved to amend the bill by striking out all after the enacting clause, and substituting another bill in lieu thereof. Ordered, that the bill, together with the proposed amendment, be referred to the committee on the judiciary to consider and report thereon. Ordered that the bill to be entitled an act more effectually to secure trials by impartial juries in capital cases be referred to the same committee.

A bill to be entitled an act to amend an act entitled an act to incorporate the town Tuscaloosa, approved January 12th, 1828, was read the second time.

When, on motion, the Senate adjourned till to-morrow morning at 10 o'clock.

*Tuesday, 16th December, 1828.*

The Senate met pursuant to adjournment.

Mr Hubbard presented the petition of sundry citizens of Lauderdale county, praying an alteration in the county court system; which was referred to the committee on the judiciary to consider and report thereon.

Mr Hubbard also presented the petition of sundry inhabitants of Walker county

praying that a certain part of Walker may be added to Lawrence county, which was referred to the committee on county boundaries.

Mr Perry, from the committee on the judiciary to which was referred a resolution instructing them to inquire into the expediency of revising and consolidating the fees of justices of the peace and constables, asked to be discharged from the further consideration thereof, the subject matter of the resolution being embraced in a bill now before the Senate, which was agreed to.

Mr Perry from the same committee to which was referred a resolution instructing them to inquire into the expediency of requiring by law the solicitors to attend the Legislature as assistant and engrossing clerks, reported that it is inexpedient in the opinion of the committee, to pass such a law, which was concurred in.

On motion of Mr Irwin, *Ordered* that the bill entitled an act to amend an act, passed at the last session of the General Assembly, authorizing a lottery in Henry county and for other purposes, together with the amendment made thereto by the House of Representatives, be referred to a special committee—whereupon Messrs Irwin, Watkins and Hubbard were appointed the committee.

A message from the House of Representatives by Mr McClellan: *Mr. President*, The House of Representatives have adopted the following resolution in which they desire your concurrence. *Resolved* that, with the concurrence of the Senate, the two Houses will, on this day, at the hour of 3 o'clock, *P. M.* proceed to the election of a solicitor of the 2nd and 5th judicial circuits. Mr Hubbard moved to amend the resolution by striking out the words 'on this day at the hour of 3 o'clock *P. M.*' and inserting the words 'on Monday next at the hour of 3 o'clock *P. M.*' which was lost. Mr Smith moved to amend the resolution by striking 'to day' and inserting 'Saturday next at 3 o'clock,' which was carried. Mr Hubbard moved further to amend the resolution by adding thereto the words 'and also a judge of the third judicial circuit,' so as to elect the judge at the same time; which was carried. The resolution as amended was then agreed to. *Ordered* that the secretary acquaint the House of Representatives therewith.

Mr Ross presented the account of William Magee, jailer of Mobile county, against the State, which was referred to the committee on accounts and claims.

Mr. Ross, also presented the account of T. L. Toulmin, sheriff of Mobile county against the State; which was referred to the same committee.

Mr Ross also presented the petition and account of William Magee and Isaac Johnston, claiming indemnity for expenses incurred and losses sustained, in pursuing to Kentucky and conveying to Mobile, a criminal who had been previously convicted of murder; which were referred to the committee on propositions and grievances, to consider and report thereon.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Wednesday, December 17th, 1823.*

The Senate met pursuant to adjournment.

Mr Powell presented the petition of sundry citizens of Marion county, praying an alteration in the lines of said county; which was read and referred to the committee on county boundaries, to consider and report thereon.

Mr Crawford presented the petition of Daniel Harrison, tax collector of Bibb county, stating that the money due from Bibb county to the State for the taxes of 1823, had been stolen from him, and praying to be relieved from the payment of the same; which was read and referred to the committee on propositions and grievances, to consider and report thereon.

A message from the House of Representatives by Mr Tunstall. *Mr President* The House of Representatives concur in the amendments made by your honorable body, to the resolution proposing to go into the election of a solicitor of the 2nd and 5th judicial circuits.

Mr More of J. from the joint committee on enrolled bills, reported as correctly enrolled an act to divorce Hugh McVay from Sophia W. McVay; an act to authorize Celia Burgess, a free woman of colour, to emancipate her daughter Fanny; an act to divorce Leecy Lewis from Mordecai Lewis; an act regulating the compensation of jurors in Pickens county; an act to divorce Elizabeth S. Littlepage from Thomas W. Littlepage; an act to legitimate and change the name of Nancy Steel to

that of Nancy Curl; an act to authorize the sheriff or corner of the county of Shelby to sell lands and slaves levied on by execution, at the town of Montevallo; an act to amend an act entitled an act to amend the act incorporating the town of Huntsville, passed the 9th day of January 1828; an act to emancipate a certain slave therein named; an act to divorce Clarissa Wade from George W. Wade; and an act to emancipate a certain slave therein named; all of which were accordingly signed by Mr. President.

Mr. Hubbard, from the committee on the State Capital to which was referred a resolution, instructing them to inquire of the commissioners appointed to superintend the erection of the said Capital, a statement of the progress in its erection, the different contracts and their nature, the amount of monies expended, the amount on hand, and whether in their opinion there will be a sufficiency of the sum appropriated for that purpose to complete the building, submitted the following document.

**TUSCALOOSA, DECEMBER —, 1828.**

Hon David Hubbard, chairman of the committee, in the Senate, on the public building or state capital: Sir—In obedience to your call, under a resolution of the senate, the commissioners appointed to superintend the erection of the state capital respectfully submit the following report, exhibiting all the contracts, and with whom made, for the erection of the building, the amount of money paid on each, also the amount which will be due on the completion of the contracts respectively, to wit:

**CONTRACTS FOR STONE WORK:** *Am't p'd. Unp'd bal. Am't con't.*

1. With John Robb for stone masonry in the foundation and basement story, and all the faced rock on the exterior of the same, as per bill and measurement	\$10500	\$3363 50	\$13863 50
2. With John Robb, for imposts and arches on the back front, ionic capitals and bases on the principal front, and for mantels and jambs for fireplaces	574 50	::	574 50
3. With Baker & Swiney, for masonry and sculpture for the upper windows	500	700	1200

**CONTRACT FOR BRICK WORK**—With Wm. Morton, jr. at \$10 per thousand for brick laid in the wall, including every expense, the work to be measured in walls, and it is estimated the building will require nine hundred thousand bricks

3000	6000	9000
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**CONTRACTS FOR CARPENTERS' WORK and Materials**—1 With Brown & Sossaman, to find all the materials, and do all the carpenters' work according to certain specifications. Mr Brown finding to perform his part of the contract, the whole devolved on Henry A. Sossaman, including all the work of the floors, of sleepers and joist, and the roof and dome completed; all of which is to be measured and valued according to prices agreed on, and is estimated to cost five thousand five hundred dollars

3000	2500	5500
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2. With James Bevell, for all the joiners' work in the south wing of the building, on the basement story

200	354	554
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3. With Wm Morrison, for similar work in the north wing basement story

100	416 50	516 50
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Also, Wm. Morrison, for carpenters' work in and about the building, not included in the contract

123 75	::	123 75
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4. With James Mallery, for joiners' work in the supreme court room, vestibule and rotunda

200	450	650
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Also, Jas. Mallery, for building an office and ware-room for stores, making centres for turning arches, &c.

137 12½	::	137 12½
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5. With John S. Field for all the sashes and frames on the two upper stories of the building.

220 00	340 00	560 00
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**CONTRACTS FOR LUMBER:**

1. With David Fanner, contract complete

606 94	::	606 94
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2. With Richard Cole, do. do.

44 79	::	44 79
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3. With Wm. McGuire, do. do.

60 75	::	60 75
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4. With Wm. P. Brown, do. do.

200	::	200
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Contract with David Johnson, for covering the dome, flats, and gutters, &c. with copper, as estimated by weight, will cost

::	700	700
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James H. Dearing & Co. for articles directed to be purchased in New York, for use in the building, including all the nails, screws, glue, locks, hinges,

paints, oil, putty, glass, plaster of paris, &c as per bill  
 Jas. Hogan & Co for cast iron backs for chimneys  
 contracts remain to be made for the wood work  
 of the lantern on the dome, and a balustrade all  
 round the eaves of the building, which, with inci-  
 dental expenses in covering in, is estimated not to  
 exceed this amount, say

4382	::	4382
31 10	::	31 10
<hr/>		
::	1295 04½	1295 04½
<hr/>		
\$23880 95½	16119 04½	40000 00

The foregoing statement comprehends all the workmanship and materials required in covering in the building; including all the outside doors and frames, all the sash-frames and glass throughout the building, and all the joiners' work in finishing the supreme court room in a handsome style, and all the other rooms and offices in a decent one; leaving on hand plank, ironmongery, paints, plaster of paris, and other articles to the value of from four to five thousand dollars towards finishing the joiners', plasterers', and painters' work of the upper stories. The erection of the building is at this time progressing in a very satisfactory manner. Some inconvenience was heretofore and is yet felt in the progress of the work, from the tardy operations of Wm. Morton, jr in the execution of his contract for the brick work; he, however, at this time, is making considerable exertion, and is progressing rapidly with the work. But the same time it is due to remark that some injury has resulted to the public interest, and also to the individuals who have contracts for the carpenter's and joiners' work. It will be perceived that after covering in the building and finishing the rooms in the basement story, there will remain on hand a handsome balance of the original appropriation; whether it will be sufficient for the entire completion of the building it is difficult to decide; we, however, fondly indulge the hope that it will be, and can only say that no exertion shall be wanting on our part to make it so. All of which is respectfully submitted.

*J. L. Findall, J. Hogan, S. B. Ewing, J. H. Dearing, Comm'rs.*

*Ordered,* That the report lie on the table.

Mr Perry, from the committee on the judiciary, to which was referred a bill to be entitled an act, the better to secure impartial trials by juries; and also a bill to be entitled an act more effectually to secure trials in capital cases by impartial juries, together with the amendment proposed to the former, reported a substitute for both bills by way of amendment; which was disagreed to.

A bill to be entitled an act more effectually to secure trials in capital cases by impartial juries, was read the second time. Mr Hubbard moved to amend the bill by striking out all after the enacting clause, and substituting another bill in lieu thereof; and the question being put on striking out, it was carried. The question was then put on the adoption of the substitute offered by Mr Hubbard and carried. Ordered that the bill be recommitted to a special committee: Whereupon, Messrs Pickett, Hubbard and Evans, were appointed.

A bill to be entitled an act the better to secure impartial trials by juries in certain cases, was read the second time and referred to a special committee, consisting of Messrs Moore of J. Hubbard and Perry, to consider and report thereon.

Mr McVay offered the following resolution: *Resolved*, That the committee on the judiciary, be instructed to inquire into the expediency of providing by law, for compensating jurors for their services in attending county courts, with leave to report by bill or otherwise; which was adopted.

Mr Irwin introduced a bill to be entitled an act to amend in part the 4th section of an act, passed at the last session of the General Assembly, appointing commissioners for Dale county, and for other purposes; which was read and ordered to a second reading to-morrow.

Mr Perry introduced a bill to be entitled an act to amend an act entitled an act to regulate proceedings in chancery suits, passed 1st, January 1823; which was read and ordered to a second reading to-morrow.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Thursday, December 18, 1828.*—The Senate met pursuant to adjournment.

Mr Powell presented the petition of sundry persons residing in Hill's settlement in Tuscaloosa county in opposition to an annexation of that part of Tuscaloosa county in which they reside to Bibb county; which was read and referred to the committee on county boundaries, to consider and report thereon.

Mr Moore of J. from the special committee to which was referred a bill to be entitled an act the better to secure impartial trials by juries, reported the same as g-

mended; which was concurred in. Ordered that the bill be engrossed, and made the order of the day for a third reading to-morrow.

An engrossed bill to be entitled an act concerning dower, was read the third time, and the question being put, "shall the bill pass?" it was determined in the negative. Yeas 7—nays 15.

The yeas and nays being desired, those who voted in the affirmative are, Messrs Conner, Crawford, Hubbard, Irwin, Perry, Pickett and Skinner.

Those who voted in the negative are, Mr. President, Abercrombie, Evans, Garth, McVay, Merriwether, Moore of J. Moore of M. Powell, Ross, Smith, Vining, Walthall, Watkins and Wood.

An engrossed bill to be entitled an act giving a summary remedy against securities in bonds, to keep the prison bounds in certain cases, was read the third time, and the question being put, "shall the bill pass?" it was determined in the negative. Yeas 8—nays 14.

The yeas and nays being desired, those who voted in the affirmative are, Messrs Abercrombie, Merriwether, Perry, Powell, Skinner, Smith, Vining and Wood.

Those who voted in the negative are, Mr. President, Conner, Crawford, Evans, Garth, Hubbard, Irwin, McVay, Moore of J. Moore of M. Pickett, Ross, Walthall and Watkins. So the bill was rejected.

*Ordered*, That the bill entitled an act to amend an act entitled an act incorporate the town of Tuscaloosa, approved January 12, 1828, be engrossed and made the order of the day for a third reading on to-morrow.

And then the Senate adjourned till to-morrow morning at 9 o'clock.

*Friday, December 19, 1828.*

The Senate met pursuant to adjournment.

Mr Moore of J. from the joint committee on enrolled bills, reported as correctly enrolled, an act to locate the seat of justice in Henry county, and for other purposes; an act to change the names of certain persons therein named, and to legitimate the same; an act to authorize the Judge of the county court and commissioners of Revenue and Roads, of the county of Perry, to make a certain appropriation therein named; an act for the relief of sheriffs; an act to annex a part of the county of Dale to the county of Pike; an act to repeal an act entitled an act to provide for the payment of petit jurors in certain counties therein named, approved, December 22, 1826, so far as said act relates to the county of Shelby; an act to alter or change the name of a certain person therein named; and an act for the relief of Henry S. Foote; all of which were accordingly signed by Mr President.

A Message from the House of Representatives by Mr Tunstall:—Mr President, Pursuant to a rule adopted the present session, for the government of the proceedings of the two Houses, I beg leave to inform your honorable body, that bills which originated in the Senate entitled an act more effectually to prevent judges of the circuit courts from charging juries on matters of fact, and the better to secure the right of trial by jury, and an act to authorize Archibald McCarnes to turn Byler's turnpike road below his mill on clear creek in Fayette county have been postponed; the one to the first Monday in August next, and the other till the first Monday in November next.

Mr Garth from the special committee to which was referred a bill to be entitled an act to authorize the building of a jail in Morgan county reported the same without amendment. *Ordered* that the bill be made the order of the day for the third reading on to-morrow.

Mr Smith offered the following resolution: *Resolved* that the committee on schools and colleges, and school and college lands be instructed to inquire what lands are necessary to be retained for the use of the University, and what lands of those reserved from sale should now be sold; which was adopted.

Mr. McVay offered the following resolution: *Resolved* that the committee on schools and colleges and school and college lands be instructed to inquire into the expediency and propriety of so amending the 6th section of an act entitled an act to authorize the sale of 16 sections and for other purposes, passed Jan. 15, 1828, that the interest on any moneys paid or that any hereafter be paid into the Bank by commissioners of 16 sections, shall be considered reinvested as principal at the end

of every quarter, if not drawn out by said commissioners, with leave to report by bill or otherwise ; which was adopted.

Mr Abercrombie introduced a bill to be entitled an act more effectually to prevent the evil practice of duelling, which was read and ordered to a second reading to-morrow.

Mr Hubbard introduced a joint memorial to the Congress of the United States, asking them to repeal all laws of Congress which gives to the government of the United States a priority of payment over private creditors in cases of insolvency, and in the distribution of estates of deceased debtors ; which was read and ordered to a second reading to-morrow.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Saturday, 20th December, 1828.*

The Senate met pursuant to adjournment.

Mr Meriwether presented the petition of Benjamin James and others praying authority to emancipate certain slaves therein named ; which was read and referred to a special committee consisting of Messrs Meriwether, Powell and Crawford to consider and report thereon.

Mr Irwin from the special committee to which was referred a bill to be entitled an act to amend an act, passed at the last session of the General Assembly, authorizing a lottery in Henry county and for other purposes, together with the amendment made thereto by the House of Representatives, reported the same without amendment. Ordered that the Senate concur in said amendment and that the secretary acquaint the House therewith.

Mr Abercrombie from the committee on county boundaries to which was referred the petition of sundry citizens of Marion county praying that a certain part of said county may be added to the county of Fayette, reported that the alteration asked for would reduce the county of Marion below its constitutional size, and that therefore the prayer of the petitioners is unreasonable and ought not to be granted ; which was concurred in.

Mr Irwin presented the following communication from the Adjutant General of the State.

ADJUTANT GENERAL'S OFFICE, }  
Tuscaloosa, December 16, 1828. }

To the Hon. the President of the Senate.

Sir, I have the honor to enclose herewith the annual report of the strength and condition of the militia of the State of Alabama for the present year, so far as returns are received. In submitting this return to the Legislature the undersigned has to regret the culpable apathy which seems to prevail among the returning officers of the Divisions, causing the abstract to be greatly deficient, as a reference to it will shew. Without adverting to the confusion which would inevitably prevail in the event of war arising, from an almost total ignorance of the actual strength and condition of the militia, the loss of arms annually sustained by the state is a consideration sufficiently important to require the enactment of a law coercing punctuality in the returning officers, and securing thereby the important interests of the State. For this purpose the undersigned intends submitting to his Excellency the Governor, the proper constitutional organ of communication, a plan which he trusts will not only meet his approbation, but upon his recommendation will receive the sanction of the Legislature also ; with very great respect I have the honor to be &c. (Signed)

J. G. CARROL, *Adjutant and Inspector General, Alabama Militia.*

Ordered that the communication, together with the accompanying report, be referred to the military committee.

Mr McVay offered the following resolution : *Resolved* that the committee on the judiciary be instructed to inquire into the propriety of repealing so much of the present law as requires subpoenas from every court, and of providing by law that when a subpoena is once served, it shall be sufficient to require the attendance of the witness unless discharged, until the trial of the cause ; with leave to report by bill or otherwise ; which was adopted.

Mr Conner offered the following resolution : *Resolved* that the committee on the judiciary be instructed to inquire in the expediency of requiring by law tax collectors to receive just claims against the respective counties in discharge of county taxes, with leave to report by bill or otherwise ; which was adopted.

An engrossed bill to be entitled an act to amend an act entitled an act to incorporate the town of Tuscaloosa, approved January the 12, 1828, was read the third time, amended by way of rider on Mr Powell's motion and passed. Ordered that the title of the bill be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

An engrossed bill to be entitled an act the better to secure impartial trials by juries in certain cases, was read the third time. Mr Picken offered the following amendment to the bill by way of rider: *and be it therefore enacted*, that the attorney for the State shall have the right to join peremptory challenges; which was read three several times and adopted. Mr Hubbard offered the following amendment to the bill by way of rider: *and be it further enacted*, that in all cases where one defendant alone can commit any offence, any of the parties accused shall have a right to demand a severance in their trial; which was read three several times and adopted. The question was then put, shall the bill pass? and determined in the affirmative. Ordered that the title of the bill be as aforesaid and that it be sent to the House of Representatives for their concurrence.

A bill to be entitled an act to locate the University of the State of Alabama at Davis's in Autauga county, was read the second time and referred to the committee on schools and colleges, and school and college lands, to consider and report thereon.

The following communication was received from the Governor, by Mr Thornton, Secretary of State:

EXECUTIVE DEPARTMENT, TUSCALOOSA, DECEMBER 18, 1828.

The Hon. the President and Members of the Senate:

Gentlemen—I have the honor to announce to you, that I have this day received the resignation of Bolling Hall Esq. a member of the board of Trustees of the University of Alabama, elected for the 2nd Judicial Circuit. I have the honor to be most respectfully, your obt. servant.

JOHN MURPHY.

*Ordered.* That the communication lie on the table.

A bill to be entitled an act to incorporate Valley Creek Academy in the county of Dallas; and an act to amend in part the 4th section of an act, passed at the last session of the General Assembly, appointing commissioners for Dale county, and for other purposes; were severally read the second time and ordered to be engrossed for a third reading on Monday next.

A bill to be entitled an act to reduce into one, the several acts giving fees to justices of the peace and constables, and for other purposes; an act to amend an act entitled an act to regulate proceedings in chancery suits, passed 1st January, 1823; and an act the more effectually to prevent the evil practice of duelling; were severally read the second time and referred to the committee on the judiciary, to consider and report thereon.

A bill to be entitled an act to divorce Matilda S. Chann from Lancelot Chann, was read the second time and referred, together with the accompanying documents, to the committee on divorce and alimony.

A bill to be entitled an act to legitimate and change the name of Preston Newberry to Preston Moore, and for other purposes; was read the second time and ordered to a third reading on Monday next.

A bill to be entitled an act to authorize the building of a Jail in Morgan county, was read the third time and passed. Ordered that the Secretary acquaint the House of Representatives therewith.

Joint memorial to the Congress of the United States, asking them to repeal all laws of Congress which give to the Government of the United States a priority of payment over private creditors in cases of insolvency, and in the distribution of the estates of deceased debtors; was read the second time and ordered to be engrossed for a third reading on Monday next.

Mr Smith offered the following resolution: *Resolved*, That a special committee of three members be appointed from this House, to draft a memorial to the Congress of the United States, praying for an extension of the federal judiciary circuit system to our western States, which was adopted:—Whereupon, Messrs Smith, Hubbard and Perry were appointed the committee.

Mr Powell, introduced a bill to be entitled an act making a certain appropriation herein named; which was read and ordered to a second reading on Monday next.

And then the Senate adjourned till 3 o'clock this evening.

*Three o'clock P. M.*—The Senate met pursuant to adjournment.

A message was received from the House of Representatives by Mr Tunstall, inviting the Senate to assemble in the Representative Hall, for the purpose of going into the election of a Judge of the third judicial circuit, in place of John Gayle, jr. Esq. resigned, and Solicitors of the 2d and 5th judicial circuits: Whereupon, the members of the Senate repaired to the Hall of the House of Representatives, and having taken their seats, Mr President arose and announced the object of the meeting, when the two Houses proceeded to the election of a Judge of the third judicial circuit. Eli Shortridge, John D. Bibb, Henry W. Collier and Thomas Owen, Esqrs. being in nomination.

For messrs Shortridge 28 votes—Bibb 26—Collier 21—Owen 15.

Those who voted for Mr Shortridge are, messrs Crawford, Hubbard, Irwin, Moore of J. Pickett, Skinner, Smith, senate; mr Adams, Ambister, Anderson, Belser, Bridge, Brown, Clark, Cawthon, Clough, Coopwood, Dupuy, Flournoy, Hill, Mims, Parker, Robison, Satter, Smith of J. Townsend of P. Walker of D. and Wallbourne.

Those who voted for Mr Bibb are, messrs President, Abercrombie, Conner, Garth McVay, Ross of the senate; mr Barker, Bibb of L. Bibb of M. Bonnell, Broadnax Dale, Edmundson, Foster, Lane, Lea, Lewis of F. Massey, Metcalfe, Mobley, McElderry, Sanders, Smith of L. Sykes, Terry, Wallis.

Those who voted for Mr Collier are, messrs Perry, Vining, Watkins Wood of senate; Mr Speaker, Banks, Colgin, Cook, Durrett, Fearn, Harris, Lane, Lewis of M. Mardis, Musgrave, Parsons, Penn, Perkins, Rogers, Tarver, Townsend of M.

Those who voted for Mr Owen are, messrs Evans, Meriwether, Moore of M. Powell, Walhall, of the senate; mr Barton, Brandon, Cole, Duke, Gage, Hodges, Pickens Walker of M. Weissinger and Whitfield.

No one of the candidates having received a majority of votes given, both houses proceeded again to the election of a Judge of the 3d judicial circuit: the same gentlemen being in nomination. For Mr Shortridge 29 votes—Bibb 26—Collier 21—Owen 15.

Those who voted for Mr Shortridge are, messrs Crawford, Hubbard, Irwin, Moore of J. Pickett, Skinner, Smith of the senate; mr Adams, Ambister, Anderson, Belser, Bridges, Brown, Clark, Cawthon, Clough, Coopwood, Dupuy, Flournoy, George, Hill, Mims, Parker, Robison, Satter, Smith of J. Townsend of P. Walker of D. and Wallbourne.

Those who voted for Mr Bibb are, messrs President, Abercrombie, Conner, Garth McVay, Ross of the senate; mr Barker, Bibb of L. Bibb of M. Bonnell, Broadnax Dale, Edmundson, Foster, Lane, Lea, Lewis of F. Massey, Metcalfe, Mobley, McElderry, Sanders, Smith of L. Sykes, Terry and Wallis.

Those who voted for Mr Collier are, messrs Perry, Vining, Watkins and Wood of the senate; mr Speaker, Banks, Colgin, Cook, Durrett, Fearn, Harris, Lawler, Lewis of M. Mardis, Musgrave, Parsons, Penn, Perkins, Rogers, Tarver and Townsend of M.

Those who voted for Mr Owen are, messrs Evans, Meriwether, Moore of M. Powell and Walhall of the senate; mr Barton, Brandon, Cole, Duke, Gage, Hodges, Pickens Walker of M. Weissinger and Whitfield.

No one of the candidates having received a majority of votes, both houses proceeded again to the election of a Judge of the third judicial circuit: the same gentlemen being in nomination. For Mr Shortridge 30 votes—Bibb 26—Collier 22—Owen 13.

Those who voted for Mr Shortridge are, messrs Crawford, Hubbard, Irwin, Moore of J. Pickett, Skinner and Smith of the senate; mr Adams, Ambister, Anderson, Belser, Bridges, Brown, Clark, Cawthon, Clough, Coopwood, Duke, Dupuy, Flournoy, George, Hill, Mims, Parker, Robison, Satter, Smith of J. Townsend of P. Walker of D. Wallbourne.

Those who voted for Mr Bibb are, messrs President, Abercrombie, Conner, Garth McVay and Ross of the senate; mr Barker, Bibb of L. Bibb of M. Bonnell, Broadnax Dale, Edmundson, Foster, Lane, Lea, Lewis of F. Massey, Metcalfe, Mobley, McElderry, Sanders, Smith of L. Sykes, Terry and Wallis.

Those who voted for Mr Collier are, messrs Perry, Vining, Watkins and Wood of the senate; mr Speaker, Banks, Colgin, Cook, Durrett, Fearn, Gage, Harris, Lawler, Lewis of M. Mardis, Musgrave, Parsons, Penn, Perkins, Rogers, Tarver, Townsend of M.

Those who voted for Mr Owen are, messrs Evans, Meriwether, Moore of M. Powell and Walhall of the senate; mr Barton, Brandon, Cole, Hodges, Pickens Walker of M. Weissinger and Whitfield.

No one of the candidates having received a majority of votes, both houses proceeded again to the election of a Judge of the third judicial circuit: the same candidates being again in nomination, except Thomas Owen who was withdrawn. For Mr Shortridge 32 votes—Bibb 27—Collier 21.

Those who voted for Mr Shortridge are, messrs Crawford, Evans, Hubbard, Irwin



Moore of J. Pickett, Skinner Smith, of the senate; mr Adams, Ambrister, Anderson Belser, Bridges, Brown, Clark, Cawthon, Cole, Coopwood, Duke, Dupuy, Flournoy, George Hill, Mims Parker, Pickens, Robison, Salter, Smith of J. Townsend of P. Walker of D. and Wellborne

Those who voted for mr Bibb are, messrs President, Abercrombie, Conner, Garth McVay, Ross, of the senate; mr Barker, Bibb of L. Bibb of M. Bonnell, Broadnax, Dale Edmondson, Foster, Hodges, Lane, Lea, Lewis of F. Massey, Metcalfe, Mobley, McElderry, Sanders, Smith of L. Sykes, Terry and Wallis.

Those who voted for mr Collier are, messrs Merriwether, Moore of M. Perry, Powell Vining Walthall, Watkins and Wood of the senate; mr Speaker, Banks, Barton, Brandon, Colgin, Cook, Durrett, Fearn, Gage, Harris, Lawler, Lewis of m. Mardis, Musgrove, Parsons, Penn, Perkins, Rogers, Tarver, Townsend of m. Walker of m. Weissinger and Whitfield.

No one of the candidates having received a majority of votes, the two houses proceeded again to the election of a Judge of the third judicial circuit: the same persons being in nomination as before. For mr Shortridge 31 votes—Bibb 26—Collier 33.

Those who voted for mr Shortridge are, messrs Crawford, Evans, Hubbard, Irwin, Moore of J. Pickett, Skinner and Smith of the senate; mr Adams, Ambrister, Anderson, Bridges, Belser, Brown, Clark, Cawthon, Cole, Coopwood, Duke, Flournoy, George, Hill, Mims, Parker, Pickens, Robison, Salter, Smith of J. Townsend of P. Walker of D. Wellborne.

Those who voted for mr Bibb are, mr President, Abercrombie, Conner, Garth, McVay and Ross of the senate; mr Barker, Bibb of L. Bibb of m. Bonnell, Broadnax, Dale, Edmondson, Foster, Hodges, Lane, Lea, Lewis of F. Massey, Metcalfe, Mobley, McElderry, Sanders, Sykes, Terry and Wallis.

Those who voted for mr Collier are, mr Merriwether, Moore of m. Perry, Powell Vining, Walthall, Watkins and Wood of the senate; mr Speaker, Banks, Barton, Brandon, Colgin, Cook, Dupuy, Durrett, Fearn, Gage, Harris, Lawler, Lewis of m. Mardis, Musgrove, Parsons, Penn, Perkins, Rogers, Smith of L. Tarver, Townsend of m. Walker of m. Weissinger and Whitfield.

No one of the persons in nomination having received a majority of votes both houses proceeded to vote the sixth time for a judge of the 3d judicial circuit. The votes stood thus: For mr Shortridge 29—mr Bibb 27—mr Collier 34.

Those who voted for mr Shortridge are, messrs Crawford, Evans, Hubbard, Irwin, Moore of J. Pickett, Skinner, Smith of the senate; mr Adams, Ambrister, Anderson, Belser, Bridges, Clark, Cawthon, Cole, Duke, Flournoy, George, Hill, Mims, Parker, Pickens, Robison, Salter, Smith of J. Townsend of m. Walker of D. and Wellborne.

Those who voted for mr Bibb are, mr President, Abercrombie, Conner, Garth, McVay of the senate, mr Barker, Bibb of L. Bibb of m. Bonnell, Broadnax, Coopwood, Dale, Edmondson, Foster, Hodges, Lane, Lea, Lewis of F. Massey, Metcalfe, Mobley, McElderry, Sanders, Sykes, Terry and Wallis.

Those who voted for mr Collier are, messrs Merriwether, Moore of M. Perry, Powell Vining, Walthall, Watkins, Wood of the senate; mr Speaker, Banks, Barton, Brandon, Brown, Colgin, Cook, Dupuy, Durrett, Fearn, Gage, Harris, Lawler, Lewis of m. Mardis, Musgrove, Parsons, Penn, Perkins, Rogers, Smith of L. Tarver, Townsend of m. Walker of M. Weissinger and Whitfield.

No one of the persons in nomination having received a majority of votes both houses proceeded to vote the seventh time for a judge of the 3d circuit. The votes stood thus: For mr Shortridge 28—mr Bibb 28—mr Collier 34.

Those who voted for mr Shortridge are, messrs Crawford, Evans, Hubbard, Irwin, Moore of J. Pickett, Skinner, Smith of the senate; Adams, Ambrister, Anderson, Bridges, Clark, Cawthon, Cole, Duke, Flournoy, George, Hill, Mims, Parker, Pickens, Robison, Salter, Smith of J. Townsend of P. Walker of D. and Wellborne.

Those who voted for mr Bibb are, mr President, Abercrombie, Conner, Garth, McVay, Ross of the senate, Barker, Belser, Bibb of L. Bibb of m. Bonnell, Broadnax, Coopwood, Dale, Edmondson, Foster, Hodges, Lane, Lea, Lewis of F. Massey, Metcalfe, Mobley, McElderry, Sanders, Sykes, Terry and Wallis.

Those who voted for mr Collier are, messrs Merriwether, Moore of m. Perry, Powell Vining, Walthall, Watkins, Wood of the senate; Banks, Barton, Brandon, Brown, Colgin, Cook, Dupuy, Durrett, Fearn, Gage, Harris, Lawler, Lewis of m. Mardis, Musgrove, Parsons, Penn, Perkins, Rogers, Smith of L. Tarver, Townsend of m. Walker of m. Weissinger and Whitfield.

No one of the candidates having received a majority of votes, the two houses proceeded again to the election of a Judge of the third judicial circuit: John D. Bibb and Henry W. Collier being in nomination. For mr Bibb 41 votes—Collier 48.

Those who voted for mr Bibb are, messrs President, Abercrombie, Conner, Crawford, Garth, Hubbard, Irwin, McVay, Pickett, Ross and Skinner of the senate; mr Adams

Anderson, Barker, Belser, Bibb of L. Bibb of M. Bonnell, Broadnax, Cawthon, Coopwood, Dale, Edmondson, Foster, George, Hodges, Lane, Lea, Lewis of F. Massey, Metcalfe, Mobley, McElderry, Salter, Sanders, Smith of J. Smith of L. Sykes, Terry Townsend of P. and Wallis.

Those who voted for Mr Collier are, *Messrs* Evans, Merriwether, Moore of J. Moore of M. Perry, Powell, Smith, Vining, Walthall, Watkins and Wood of the senate; Mr Speaker, Ambrister, Banks, Barton, Brandon, Brown, Clark, Cole, Colgin, Cook, Duke, Dupuy, Durrett, Fearn, Flournoy, Gage, Harris, Hill, Lawler, Lewis of M. Mardis, Miss Musgrove, Parker, Parsons, Penn, Perkins, Pickens, Robison, Rogers, Tarver, Townsend of M. Walker of M. Walker of D. Weissinger, Welborne and Whitfield.

Henry W. Collier having received a majority of votes, Mr Speaker therefore declared him duly and constitutionally elected Judge of the third judicial circuit in and for the state of Alabama.

The two houses then proceeded to the election of a Solicitor of the 2d judicial circuit, to fill the vacancy occasioned by the resignation of Henry Goldthwaite, esq. John H. Walker, Erasmus Walker, Francis S. Lyon, James B. Clarke, John W. Paul, William D. Pickett and Eli Terry, jr. being in nomination. — For Mr J. H. Walker 9 votes—E. Walker 14—Lyon 21—Clarke 10—Paul 6—Pickett 14—Terry 14.

Those who voted for J. H. Walker are, *Messrs* Abercrombie of the senate; Mr Bonnell, Cawthon, Lewis of M. Parker, Smith of L. Townsend of P. Weissinger, Welborne.

Those who voted for E. Walker are, *Messrs* Moore of J. of the senate; Mr Ambrister, Barker, Cole, Coopwood, Dale, Gage, Hodges, Massey, Metcalfe, Pickens, Salter, Smith of J. and Wallis.

Those who voted for Mr Lyon are, *Messrs* President, Conner, Irwin, Merriwether, Powell, Ross, Walthall, Watkins and Wood of the senate; Mr Speaker, Anderson, Barton, Fearn, Flournoy, Foster, Harris, Mobley, Parsons, Perkins, Townsend of M. and Whitfield.

Those who voted for Mr Clarke are, Mr Crawford of the senate; messrs Brown, Colgin, Dupuy, Hill, Lawler, Mardis, Musgrove, McElderry and Rogers.

Those who voted for Mr Paul are, Mr Perry of the senate; Mr Cook, Lane, Lea, Penn and Tarver.

Those who voted for Mr Pickett are, messrs Hubbard, Moore of M. Pickett, Skinner, Smith and Vining of the senate; Mr Adams, Belser, Brandon, Duke, Lewis of F. Mims and Walker of M.

Those who voted for Mr Terry are, Mr Evans, McVay, Banks, Bibb of L. Bibb of M. Bridges, Broadnax, Durrett, Edmondson, George, Robison, Sanders, Sykes, Terry.

No one of the candidates having received a majority of votes, both houses proceeded again to the election of a Solicitor of the 2d judicial circuit. The same gentlemen being in nomination. — For Mr J. H. Walker 9 votes—E. Walker 15—Lyon 22—Clarke 8—Paul 6—Pickett 13—Terry 16.

Those who voted for J. H. Walker are, Mr Abercrombie of the senate; Mr Bonnell, Cawthon, Lewis of M. Parker, Smith of L. Townsend of P. Weissinger and Welborne.

Those who voted for E. Walker are, Mr Moore of J. of the senate; Mr Ambrister, Barker, Clough, Cole, Coopwood, Dale, Gage, Hodges, Massey, Metcalfe, Pickens, Salter, Smith of J. and Wallis.

Those who voted for Mr Lyon are, Mr President, Conner, Irwin, Merriwether, Powell, Ross, Smith, Walthall, Watkins, Wood of the senate; Mr Speaker, Anderson, Barton, Fearn, Flournoy, Foster, Harris, Mobley, Parsons, Perkins, Townsend of M. Whitfield.

Those who voted for Mr Clarke are, Mr Crawford of the senate; Mr Colgin, Hill, Lawler, Mardis, Musgrove, McElderry and Rogers.

Those who voted for Mr Paul are, Mr Perry of the senate; Mr Cook, Lane, Lea, Penn and Tarver.

Those who voted for Mr Pickett are, messrs Garth, Hubbard, Moore of M. Pickett, Skinner and Vining of the senate; Mr Adams, Belser, Brandon, Broadnax, Duke, Lewis of F. Mims and Walker of M.

Those who voted for Mr Terry are, messrs Evans and McVay of the senate; messrs Banks, Bibb of L. Bibb of M. Bridges, Brown, Broadnax, Dupuy, Durrett, Edmondson, George, Robison, Sanders, Sykes and Terry.

No one of the candidates having received a majority of votes, the two houses proceeded again to the election of a Solicitor of the 2d judicial circuit. The same persons being in nomination, except Mr Clarke and Paul, who were withdrawn. — For J. H. Walker 14 votes—E. Walker 21—Lyon 14—Pickett 13—Terry 16.

Those who voted for J. H. Walker are, messrs Abercrombie, Perry and Wood of the senate; Mr Bonnell, Cawthon, Cook, Lea, Lewis of M. Parker, Smith of L. Tarver, Townsend of P. Weissinger and Welborne.

Those who voted for E. Walker are, messrs Crawford and Moore of J. of the senate;

**Mr Ambrister, Barker, Clark, Clough, Cole, Coopwood, Dale, Gage, Hill, Hodges, Mardis, Massey, Metcalfe, Musgrove, Pickens, Rogers, Salter, Smith of J. and Wallis.**

Those who voted for **mr Lyon** are, **mr President, Conner, Irwin, Merriwether, Powell, Ross, Smith, Walthall, Watkins** of the senate; **mr Speaker, Anderson, Barton, Colgin, Fearn, Flournoy, Foster, Harris, Lane, Mobley, Parsons, Penn, Perkins, Townsend** of m.

Those who voted for **mr Pickett** are, **messrs Garth, Hubbard, Moore** of m. **Pickett, Skinner** and **Vining** of the senate; **mr Adams, Belser, Brandon, Lewis** of **F. Mims** and **Walker** of m.

Those who voted for **mr Terry** are, **messrs Evans** and **McVay** of the senate; **mr Banks, Bibb** of **L. Bibb** of **M. Bridges, Broadnax, Brown, Dupuy, Durrett, Edmondson, George Lawler, McElderry, Robison, Sanders, Sykes** and **Terry.**

No one of the candidates having received a majority of votes, the two houses proceeded again to the election of a Solicitor of the 2d judicial circuit. The same persons being in nomination—For **J. H. Walker** 14 votes—**E. Walker** 22—**Lyon** 24—**Pickett** 13—**Terry** 18.

Those who voted for **J. H. Walker** are, **messrs Abercrombie, Perry** and **Wood** of the senate; **mr Bonnell, Cawthon, Cook, Lea, Lewis** of m. **Parker, Smith** of **L. Tarver, Townsend** of **P. Weissinger** and **Wellborne.**

Those who voted for **E. Walker** are, **messrs Crawford** and **Moore** of **J.** of the senate; **Mr Ambrister, Barker, Clarke, Clough, Cole, Coopwood, Dale, Gage, Hill, Hodges, Mardis, Massey, Metcalfe, Musgrove, Pickens, Rogers, Salter, Smith** of **J. and Wallis.**

Those who voted for **mr Lyon** are, **mr President, Conner, Irwin, Merriwether, Powell, Ross, Smith, Walthall** and **Watkins** of the senate; **mr Speaker, Anderson, Barton, Colgin, Fearn, Flournoy, Foster, Harris, Lane, Mobley, Parsons, Penn, Perkins** and **Townsend** of m.

Those who voted for **mr Pickett** are, **messrs Garth, Hubbard, Moore** of m. **Pickett, Skinner** and **Vining** of the senate; **mr. Adams, Belser, Brandon, Lewis** of **F. Mims** and **Walker** of m.

Those who voted for **mr Terry** are, **messrs Evans** and **McVay** of the senate; **mr Banks, Bibb** of **L. Bibb** of **M. Bridges, Broadnax, Brown, Dupuy, Durrett, Edmondson, George Lawler, McElderry, Robison, Sanders, Sykes** and **Terry.**

No one of the candidates having received a majority of votes, the two houses proceeded again to the election of a Solicitor of the 2d judicial circuit. **John H. Walker, Erasmus Walker, Francis S. Lyon** and **Eli Terry, jr.** being in nomination. — For **J. H. Walker** 21—**E. Walker** 27—**Lyon** 25—**Terry** 21.

Those who voted for **J. H. Walker** are, **mr Abercrombie, Garth, Perry, Vining, Wood** of the senate; **mr Adams, Bonnell, Cawthon, Cook, Lea, Lewis** of m. **Parker, Smith** of **L. Tarver, Townsend** of **P. Weissinger** and **Wellborne.**

Those who voted for **E. Walker** are, **messrs Crawford** and **Moore** of **J.** of the senate; **mr. Ambrister, Barker, Belser, Brandon, Clark, Clough, Cole, Coopwood, Dale, Duke, Gage, Hill, Hodges, Lewis** of **F. Mardis, Massey, Metcalfe, Mims, Musgrove, Pickens, Rogers, Salter, Smith** of **J. Walker** of m. and **Wallis.**

Those who voted for **mr Lyon** are, **mr President, Conner, Irwin, Merriwether, Moore** of m. **Powell, Smith, Walthall, Watkins** and **Ross** of the senate; **mr Speaker, Anderson, Barton, Colgin, Fearn, Flournoy, Foster, Harris, Mobley, Musgrove, Parsons, Penn, Perkins, Townsend** of m. and **Whitfield.**

Those who voted for **mr Terry** are, **mr Evans, Hubbard, McVay, Pickett, Skinner** of the senate; **mr Banks, Bibb** of **L. Bibb** of m. **Broadnax, Bridges, Brown, Dupuy, Durrett, Edmondson, George, Lawler, McElderry, Robison, Sanders, Sykes** and **Terry.**

No one of the candidates having received a majority of votes, the two houses proceeded again to the election of a Solicitor of the 2d judicial circuit. The same persons being in nomination. — For **J. H. Walker** 16 votes—**E. Walker** 31—**F. S. Lyon** 23—**Terry** 20.

Those who voted for **J. H. Walker** are, **mr Abercrombie, Vining, Watkins** and **Wood** of the senate; **mr Bonnell, Cawthon, Colgin, Cook, Lea, Lewis** of m. **Parker, Smith** of **L. Tarver, Townsend** of **P. Weissinger** and **Wellborne.**

Those who voted for **E. Walker** are, **messrs Crawford, Garth, Hubbard, Moore** of **J.** and **Perry** of the senate; **mr Adams, Ambrister, Barker, Belser, Brandon, Clark, Clough, Cole, Coopwood, Dale, Duke, Gage, Hill, Hodges, Lewis** of **F. Mardis, Massey, Metcalfe, Mims, Musgrove, Pickens, Rogers, Salter, Smith** of **J. Walker** of m. and **Wallis.**

Those who voted for **mr Lyon** are, **mr President, Conner, Irwin, Merriwether, Moore** of m. **Powell, Ross, Smith** and **Walthall** of the senate; **mr Speaker, Anderson, Barton, Fearn, Flournoy, Foster, Harris, Lane, Mobley, Parsons, Penn, Perkins, Townsend** of m. and **Whitfield.**

Those who voted for **mr Terry** are, **messrs Evans, McVay, Pickett** and **Skinner** of the

senate; mr Banks, Bibb of L. Bibb of m. Bridges, Broadnax, Brown, Dupuy, Durrett, Edmondson, George, Lawler, McElderry, Robison Sanders, Sykes and Terry.

No one of the candidates having received a majority of votes, the two houses proceeded again to the election of a Solicitor of the 2d judicial circuit. The same persons being in nomination. For mr J. H. WALKER 16 votes—E. WALKER 32—LYON 24—TERRY 18.

Those who voted for J. H. WALKER are, messrs Abercrombie, Garth, Perry, Vining, Watkins and Wood of the senate; mr Bonnell, Lea, Lewis of m. Parker, Smith of L. Tarver, Townsend of P. Weissinger and Wellborne.

Those who voted for E. WALKER are, messrs Crawford, Hubbard, Moore of J. Skinner of the senate; mr Adams, Ambuster, Barker, Belser, Brandon, Brown, Clark, Clough, Cole, Cook, Coopwood, Dale, Duke, Gage, Hill, Hodges, Lewis of P. Mardis, Massey, Metcalfe, Mims, Musgrove, Pickens, Rogers, Salter, Smith of J. Walker of m. and Wallis.

Those who voted for mr LYON are, mr President, Conner, Irwin, Merriwether, Moore of m. Powell, Ross, Smith and Walthall of the senate; mr Speaker, Anderson, Barton, Colgin, Fearn, Flournoy, Foster, Harris, Lane, Mobley, Parsons, Penn, Perkins, Townsend of m.

Those who voted for mr TERRY are, mr Evans, McVay and Pickett of the senate; mr Banks, Bibb of L. Bibb of m. Bridges, Broadnax, Durrett, Edmondson, Lawler, McElderry, Robison, Sanders, Sykes and Terry.

No one of the candidates having received a majority of votes, the two houses proceeded again to the election of a Solicitor of the 2d judicial circuit. The same persons being in nomination. For J. H. WALKER 15 votes—E. WALKER 35—LYON 24—TERRY 16.

Those who voted for J. H. WALKER are, messrs Abercrombie, Perry, Vining, Watkins and Wood of the senate; mr Bonnell, Cawthon, Lea, Lewis of m. Parker, Smith of L. Tarver, Townsend of P. Weissinger and Wellborne.

Those who voted for E. WALKER are, messrs Crawford, Garth, Hubbard, Moore of J. Skinner of the senate; mr Adams, Ambuster, Barker, Belser, Brandon, Brown, Clark, Clough, Cole, Cook, Coopwood, Dale, Duke, Dupuy, Gage, George, Hill, Hodges, Lewis of P. Mardis, Massey, Metcalfe, Mims, Musgrove, Pickens, Rogers, Salter, Smith of J. Walker of m. and Wallis.

Those who voted for mr LYON are, messrs President, Conner, Irwin, Merriwether, Moore of m. Powell, Ross, Smith and Walthall of the senate; mr Speaker, Anderson, Barton, Colgin, Fearn, Flournoy, Foster, Harris, Lane, Mobley, Parsons, Penn, Perkins and Townsend of m.

Those who voted for mr TERRY are, messrs Evans, McVay and Pickett of the senate; Mr Banks, Bibb of L. Bibb of m. Bridges, Broadnax, Dupuy, Durrett, Edmondson, Lawler, McElderry, Robison, Sanders, Sykes and Terry.

No one of the candidates having received a majority of votes, the two houses proceeded again to the election of a Solicitor of the 2d judicial circuit. The same persons being in nomination. For J. H. WALKER 12 votes—E. WALKER 35—LYON 24—TERRY 18.

Those who voted for J. H. WALKER are, mr Abercrombie, Perry and Watkins of the senate; mr Bonnell, Cawthon, Lea, Lewis of m. Parker, Smith of L. Townsend of P. Weissinger and Wellborne.

Those who voted for E. WALKER are, mr Crawford, Hubbard, Merriwether, Moore of J. Skinner and Vining of the senate; mr Adams, Ambuster, Barker, Belser, Brandon, Brown, Clark, Clough, Cole, Cook, Coopwood, Dale, Duke, Gage, George, Hill, Hodges, Lewis of P. Mardis, Massey, Metcalfe, Mims, Musgrove, Pickens, Rogers, Salter, Smith of J. Walker of m. and Wallis.

Those who voted for mr LYON are, mr President, Conner, Irwin, McVay, Moore of m. Powell, Ross, Smith and Walthall of the senate; mr Speaker, Anderson, Barton, Colgin, Fearn, Flournoy, Foster, Harris, Lane, Mobley, Parsons, Penn, Perkins, Townsend of m. and Whitfield.

Those who voted for mr TERRY are, messrs Evans, Pickett and Wood of the senate; Mr Banks, Bibb of L. Bibb of m. Bridges, Broadnax, Dupuy, Durrett, Edmondson, Lawler, McElderry, Robison, Sanders, Sykes, Tarver and Terry.

No one of the candidates having received a majority of votes, the two houses proceeded again to the election. The same persons being in nomination except John H. Walker.

Those who voted for E. Walker are, messrs Crawford, Hubbard, Moore of J. Perry, Skinner, Vining, of the senate; mr Adams, Ambuster, Barker, Belser, Brandon, Clark, Clough, Cole, Cook, Coopwood, Dale, Duke, Gage, George, Hill, Hodges, Lawler, Lea, Lewis of P. Mardis, Massey, Metcalfe, Mims, Musgrove, Pickens, Rogers, Salter, Smith of J. Walker of m. Wallis and Wellborne.

Those who voted for mr Lyon are, mr President, Conner, Irwin, McVay, Merritt

whether, Moore of m. Powell, Ross Smith, Walthall Watkins of the senate; mr Speaker Anderson, Barton, Colgin, Fearn, Flournoy, Foster, Harris, Lane, Mobley, McElderry, Parsons, Penn, Perkins and Townsend of m.

Those who voted for mr Terry are, messrs Abercrombie, Evans, Pickett, Wood of the senate; mr Banks, Bibb of L. Bibb of m. Bonnell, Bridges, Broadnax, Brown, Cawthon, Dupuy, Durrett, Edmondson, Lewis of m. Parker, Robison Sanders, Smith of L. Sykes, Tarver, Terry, Townsend of P. Weissinger, Whitfield.

No one of the candidates having received a majority of votes the two houses proceeded again to the election of a Solicitor of the 2d judicial circuit. Erasmus Walker and Eli Terry, jr being in nomination. For Mr Walker 43—Terry 46.

Those who voted for mr Walker are, messrs Crawford, Hubbard, Irwin, Merrimether, Moore of J. Moore of m. Perry, Skinner, Vining, Walthall of the senate; mr Adams, Ambrister, Anderson, Barker, Beiser, Brandon, Clark, Clough, Cole, Colgin, Cook, Coopwood, Dale, Duke, Flournoy, Foster, Gage, Hill, Hodges, Lea, Lewis of F. Mardis, Massey, Metcalf, Mims, Musgrove, Pickens, Rogers, Satter Smith, of J. Walker of m. Wallis and Wellborne.

Those who voted for mr Terry are, mr President, Abercrombie, Conner, Evans, McVay, Pickett, Powell, Ross, Smith, Watkins and Wood of the senate; mr Speaker, Banks, Barton, Bibb of L. Bibb of m. Bonnell, Bridges, Broadnax, Brown, Cawthon, Dupuy, Durrett, Edmondson, Fearn, George, Harris, Lane, Lawler, Lewis, of m. Mobley, McElderry, Parker, Parsons, Penn, Perkins, Robinson, Sanders, Smith of L. Sykes, Tarver, Terry, Townsend of m. Townsend of P. Weissinger and Whitfield.

Eli Terry, jr. having received a majority of votes, mr Speaker therefore declared him duly and constitutionally elected Solicitor of the second judicial circuit of the State of Alabama.

Both houses then proceeded to the election of a Solicitor of the 5th judicial circuit, to fill the vacancy occasioned by the death of James M. N. White. — Charles Lewis, Thomas J. Sumner, James Penn, William H. Campbell and Joseph H. Eastland, being in nomination. — For mr Lewis 34 votes—Sumner 11—Penn 37—Campbell 1—Eastland 5.

Those who voted for mr Lewis are, messrs President, Hubbard, Merrimether, Moore of J. Powell, Skinner and Wood of the senate; mr Adams, Ambrister, Anderson, Banks, Bibb of L. Bibb of m. Broadnax, Coopwood, Dale, Duke, Dupuy, Hill, Hodges, Lawler, Lewis of F. Mardis, Metcalf, Musgrove, Parker, Rogers, Satter, Smith of J. Townsend of P. Walker of D. Wallis, Weissinger, Wellborne.

Those who voted for mr Sumner are, messrs Crawford, Irwin, McVay, Moore of m. and Pickett of the senate; mr Speaker, Beiser, Brandon, Bridges, Pickens and Walker of m.

Those who voted for mr Penn are, messrs Abercrombie, Perry, Ross, Vining, Walthall, Watkins of the senate; mr Barker, Barton, Bonnell, Brown, Cawthon, Cole, Colgin, Cook, Durrett, Edmondson, Fearn, Flournoy, Foster, Gage, George, Harris, Lane, Lea, Lewis of m. Massey, Mobley, McElderry, Parsons, Perkins, Sanders, Smith of L. Sykes, Tarver, Terry, Townsend of m. Whitfield.

Mr Clark, voted for mr Campbell.

Those who voted for mr Eastland are, messrs Conner, Evans, Garth and Smith of the senate; mr Robison.

No one of the candidates having received a majority of votes, the two houses proceeded again to the election. Charles Lewis and James Penn being in nomination. For Charles Lewis 45 votes—James Penn 44.

Those who voted for mr Lewis are, messrs President, Conner, Evans, Hubbard, Irwin, McVay, Merrimether, Moore of J. Moore of m. Powell, Skinner, Smith and Wood of the senate; mr Adams, Ambrister, Anderson, Banks, Beiser, Bibb of L. Bibb of m. Bridges, Broadnax, Clough, Coopwood, Dale, Duke, Dupuy, Hodges, Hill, Lawler, Lewis of F. Mardis, Metcalf, Musgrove, Parker, Pickens, Rogers, Satter, Smith of J. Townsend of P. Walker of D. Walker of m. Wallis, Weissinger and Wellborne—45.

Those who voted for mr Penn are, messrs Abercrombie, Crawford, Garth, Perry, Pickett, Ross, Vining, Walthall and Watkins of the senate; mr Speaker, Barker

*Barton, Bannell, Brandon, Brown, Clark, Carthon, Cole, Colgin, Cook, Durrett, E. Jamison, Egan, Flournoy, Foster, Gage, George, Harris, Lane, Lea, Lewis of St. Massey, Viobry, McElderry, Parsons Perkins, Robison, Sanders, Smith of L. Hicks, Varner, Terry, Townsend of m. and Whitfield—44*

*Charles Lewis having received a majority of one vote was declared by Mr Speaker, to be duly and constitutionally elected Solicitor of the fifth judicial circuit of the State of Alabama.*

The yeas and nays being counted the Senate withdrew, returned to their own Chamber, and Mr President resumed the chair.

When, on motion, the Senate adjourned till Monday morning at 10 o'clock.

*Monday, 22d December, 1828.*

The Senate met pursuant to adjournment.

Mr Gith, from the committee on divorce and alimony, to which was referred a bill to be entitled an act to divorce Martha S. Chum from Lancelott Chum, reported the same without amendment. Ordered, that the bill be made the order of the day for a third reading to-morrow.

Mr Howell from the special committee to which was referred, a bill to be entitled an act to emancipate certain Slaves therein named, reported the same as amended; which was concurred in. Ordered that the bill be made the order of the day for a third reading on to-morrow.

Mr McKett, from the special committee to which was referred, a bill to be entitled an act to more effectually to secure trials in capital cases by impartial juries reported the same with sundry amendments; the first of which was disagreed to. Mr Ross moved that the bill and amendments, lie on the table till the first day of June next; which was lost. Yeas 7—nays 15.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, M. Vay, Moore of J. Perry, Powell, Ross and Walhall.

Those who voted in the negative are, Messrs Abercrombie, Conner, Crawford, Egan, Gith, Howard, Lewis, Leavelle, Moore of M. Pickett, Skinner, Smith, Viobry, Watkins and Wood. Ordered, that the bill and amendments lie on the table till to-morrow.

Mr Smith, from the joint committee appointed to examine the returns in the office of the Secretary of State, exhibiting the vote of the people of this State, on the proposed amendment of the constitution relative to the tenure of the Judges, made the following report:

The Joint Committee of the two Houses of the General Assembly appointed to examine the returns in the office of the secretary of state exhibiting the vote of the people of this state on the proposed amendment of the constitution, relative to the tenure of the judges, have performed that duty, and respectfully report: That since the reports of the secretary of state, in obedience to the call of the respective houses, returns have been received at that office, from the counties of Jefferson, St. Clair and Dallas. No returns have yet been received from the counties of Jackson, Marengo, Monroe or Montgomery. The particular state and condition of the votes in the several counties from which returns have been received, will be found exhibited in thirty one abstracts, which have been prepared with much care and labor, and which are herewith submitted, marked document, from 1 to 31 inclusive. These abstracts present the entire statements and certificates of the several returning officers in each county in their own language, which is designated by inverted commas, with the exception of the names of the voters. In most cases where the names of the voters have not been returned, and where the return itself is short, it has been copied entire into the appropriate document. In nearly all of these abstracts will be found the annotations and explanations of the committee, made with a view of presenting to the two Houses in a succinct and perspicuous manner as definite an idea of the relative sufficiency of these voluminous returns as if accurate copies of the same accompanied this report. The committee are aware that some of the documents submitted would bear considerable retractions without very materially impairing the sense; and indeed the labors of the committee might thus have been greatly abridged, but it was believed to be safer to give the statements of the returning officers in their own words, than incur the responsibility of condensing their meaning into our own, especially on so important a question as that of mending our constitution. Some difference of opinion has existed among the several members of the committee as to the constitutional sufficiency of a large number of the returns, but as they have determined to furnish the House with all the materials from which their several opinions have been formed, they forbear to give those opinions on that particular question in this report. This course was deemed the most de-

corous and respectful to the two Houses, of which they are the organs, under the peculiar circumstances of presenting a full statement of facts. There is, however, one striking peculiarity which some of the returns exhibit which the committee have deemed advisable to notice in their report. Of the 31 counties from which returns have been received, 16, exclusive of the county of Dallas, which has no certificate or signature of any returning officer, contains lists of the names of the voters and 14 also, (also exclusive of the county of Dallas) do not contain lists of the names of the voters. To present to the two Houses a clearer and more summary view of this difference, there is given in the abstracts the committee have prepared, a general table which is herewith submitted and marked B. This table exhibits a list of the counties from which returns have been received in alphabetical order, next a statement of the yeas, nays, and silent votes in the several counties where the returns have been accompanied with the names of the voters; next a list of the yeas, nays, and silent votes in those counties in which they have not been so accompanied; and lastly a column shewing the aggregate amount of all the yeas, nays, and silent votes added together in each county. From this table it appears that the total aggregates are thus: in the 16 counties where the names of the voters are returned there are yeas 7,727, nays 8,210, silent 824. In the 14 counties where the votes of the voters have not been returned, including the county of Dallas, there are, yeas 9,106, nays 3,594, silent 1,137. It further appears that in the said 16 counties the aggregate votes, inclusive of yeas, nays, and silent votes returned are, 11,761; and that in the 14 counties including the county of Dallas, the aggregate votes inclusive of yeas, nays, and silent votes, returned are, 14,013 and that the total aggregate votes returned from the thirty one counties inclusive of yeas, nays, and silent votes are, 25,774. The committee at the close of their labors, adopted the following resolutions which they have instructed their respective chairman to report to their respective Houses: 1 *Resolved*, by the joint committee of the two Houses of the General Assembly; that the General Assembly cannot proceed to the ratification of the proposed amendment of the constitution relative to the tenure of the Judges' office without constitutional evidence, that a majority of all the persons voting for representatives have voted in favour of the amendment. 2 *Resolved*, that it appears from the returns in the Secretary of State's office, that a majority of all the persons voting for representatives did vote for the proposed amendment, but that the names of only 7,727 are returned that voted in favour of the amendment; and that 3,210 that voted against it, with the exception of the county of Dallas, where there were 1,194 in favour of the amendment, and 65 against it; which return has not been certified by the returning officer. That there are 9,106 in favour of the amendment, and 3,594 votes against the amendment, the names of which voters have not been returned, and that there are 2,137 silent votes. All of which is respectfully submitted (Signed,)

NEAL SMITH, Chairman of the committee of the Senate.

SETH BARTON Chairman of the committee of House of Representatives.

*Ordered*, That the report and accompanying documents lie on the table.

Mr Evans, presented the petition of Sally Haltom and William Merrell, of Marengo county, praying the Legislature to memorialize the Congress of the United States in their behalf, asking a donation of lands in consideration of injuries and losses sustained by them during the last Creek war; which was read and referred to a special committee, consisting of Messrs Evans, Smith and Perry, to consider and report thereon.

Mr McVay presented the petition of David Smithson, praying a change of venue in the trial of a criminal charge pending against him; which was read, and on Mr. McVay's motion, referred to a special committee, consisting of Messrs Perry, Garth, Crawford, Powell and Irwin.

Mr Skinner presented the account of Anderson Beene against the State; which was referred to the committee on accounts and claims.

Mr Skinner also presented the memorial of the judge of the county court and commissioners of revenue and roads of Franklin county, praying an increase in the taxes of said county so far as to raise a fund sufficient to defray the expense of transcribing the records of the county court of said county, which was read and referred to a special committee, consisting of Messrs Skinner, McVay and Moore of M. to consider and report thereon.

Mr Pickett offered the following resolution: *Resolved* that the judiciary committee be instructed to inquire into the expediency of so altering the constitution of the State of Alabama that the judges of the circuit and county courts shall be elected every four years, and that they be instructed to report resolutions to the end that the same may be acted on at the present Legislature and submitted to the people at the the next general election in case they should deem the same expedient. Mr Smith moved that the resolution lie on the table; which was carried. Yeas 14—Nays 8.



The yeas and nays being desired those who voted in the affirmative are, Mr President, Crawford, Evans, Hubbard, Irwin, McVay, Merriwether, Moore of J. Moore of Ma. Perry, Skinner, Smith, Vining and Wood.

Those who voted in the negative are, Messrs Abercrombie, Conner, Garth, Pickett, Powell, Ross, Walhall and Watkins.

Mr Pickett called up the report of the joint committee of the two Houses appointed to examine the returns in the office of Secretary of State, exhibiting the vote of the people of this State on the proposed amendment of the constitution, relative to the tenure of the Judges. Ordered that the Report be committed to a committee of the whole House and made the order of the day for Wednesday next.

An engrossed bill to be entitled an act to amend in part the 4th section of an act, passed at the last General Assembly, appointing commissioners for the county of Dale and for other purposes; and an act to incorporate the Valey Creek Academy in the county of Dallas, were severally read the third time and passed. Ordered that the titles of the bills be as aforesaid, and that they be sent to the House of Representatives for their concurrence.

A message from the House of Representatives by Mr Tunstall:—Mr President, The House of Representatives have adopted the following resolution, in which they desire your concurrence: *Resolved*, that, with the concurrence of the Senate, the two Houses will assemble in the Representative Hall this day at 3 o'clock P. M. for the purpose of electing a Trustee of the University of the State of Alabama to fill the vacancy occasioned by the resignation of Bolling Hall, Esq. Ordered that the Senate concur in the resolution relating to the election of a Trustee of the University. Ordered that the secretary acquaint the House of Representatives therewith.

An engrossed joint memorial to the Congress of the United States, asking them to repeal all laws of Congress which give to the government of the United States a priority of payment over private creditors in cases of insolvency, and in the distribution of the estates of deceased debtors, was read the third time and passed. Yeas 17 Nays 5.

The yeas and nays being desired on the passage of the memorial, those who voted in the affirmative are, Mr President, Abercrombie, Conner, Evans, Garth, Hubbard, McVay, Moore of J. Moore of Ma. Perry, Pickett, Ross, Skinner, Smith, Vining, Watkins and Wood.

Those who voted in the negative are, Messrs Coopwood, Irwin, Merriwether, Powell and Walhall. Ordered that the memorial be sent to the House of Representatives for their concurrence.

A bill to be entitled an act to legitimate and change the name of Preston Newberry to Preston Moore, and for other purposes, was read the third time and laid on the table.

A bill to be entitled an act making a certain appropriation therein named was read the second time and ordered to be engrossed for a third reading to-morrow.

And then the Senate adjourned till 3 o'clock this evening.

*Evening Session.*—Mr Wood introduced a bill to be entitled an act for the relief of Hosea Halcomb, tax collector of Jefferson county, which was read the first time. The rule requiring bills to be read on three several days being dispensed with, the bill was read the second and third time forthwith and passed. Ordered that the title be as aforesaid and that it be sent to the House of Representatives for their concurrence.

A message was received from the House of Representatives by Mr Tunstall, inviting the Senate to Assemble in the Representative Hall for the purpose of electing a Trustee of the University in place of Bolling Hall, Esq. resigned: Whereupon the members of the Senate repaired to the Hall of the House of Representatives, and having taken their seats, Mr President announced the object of the meeting. When the two Houses proceeded to elect a Trustee of the University of the State of Alabama from the 2d judicial circuit to supply the vacancy occasioned by the resignation of Bolling Hall, Esqr. Thomas Crawford and Eli Terry, Senr. being in nomination.

For Thomas Crawford 55 votes—For Eli Terry, senr. 32 votes

Those who voted for mr Crawford are, messrs President, Conner, Evans, Garth, Hub-



Gard, Irwin, McVay, Merriwether, Moore of m. Perry, Powell, Ross, Vining, Walthall and Watkins of the senate; Mr Adams, Amoryster, Anderson, Banks, Beiser, Brandon Bridges, Brown, Clark, Cawthon, Clough, Cole, Coopwood, Dale, Duke, Flournoy, Foster, Gage, Hill, Hodges, Lawler, Lea, Mardis, Massey, Metcalf, Mims, Musgrove, M. Elderry, Parker, Pickens, Richardson, Rogers, Saher, Smith of J. Townsend of P. Walker of D. Walker of m. Wallis, Weissinger, and Wellborne

Those who voted for Mr Perry are, messrs Moore of J. Pickett, Smith and Wood of the senate; Mr Speaker, Barker, Barton, Bibb of L. Bibb of m. Bonnell, Broadnax, C. G. Cook, Dupuy, Durrett, Edmondson, Fearn, George Harris, Lane, Lewis of m. Volley Parsons, Penn, Perkins, Robinson, Sanders, Smith of L. Sykes, Tarver, Townsend of m. and Whitfield

Thomas Crawford having received a majority of votes, Mr Speaker therefore declared him duly and constitutionally elected a Trustee of the University of Alabama for the second Judicial Circuit.

The election being completed, the Senate retired to their own chamber, and Mr. President resumed the chair.

When on motion the Senate adjourned till to-morrow Morning at 10 o'clock.

*Tuesday, December 23, 1828.*

The Senate met pursuant to adjournment.

Mr Irwin from the military committee to which was referred a bill to be entitled an act to repeal in part a resolution relative to the militia laws of the State, approved on the 13th January, 1828, reported the same without amendment. Ordered that the bill be made the order of the day for a third reading on to-morrow.

On motion of Mr Powell, *Ordered* that Mr Moore of Ma. have leave of absence for the remainder of this week after to day.

Mr McVay presented the account of J. P. Weatherly against the State; which was referred to the committee on accounts and claims.

Mr Wood presented the account of John B. Ayers, sheriff of Jefferson county, against the State; which was referred to the committee on accounts and claims.

Mr Conner presented the account of John Chenault, sheriff of St Clair county, against the State; which was referred to the committee on accounts and claims.

An engrossed bill to be entitled an act making a certain appropriation therein named was read the third time and passed. Ordered that the title of the bill be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

A bill to be entitled an act to divorce Matilda S. Churn from Lancelott Churn, was read the third time and passed by the requisite majority. Ordered that the secretary acquaint the House of Representatives therewith.

A message from the House of Representatives by Mr. Tunstall—Mr President, The House of Representatives have passed a bill which originated in the Senate, entitled an act for the relief of Hosea H. Comb, tax collector of Jefferson county.

A bill to be entitled an act to emancipate certain slaves therein named was read the third time as amended and passed. Ordered that the secretary inform the House thereof.

Mr Abercrombie moved to take up the bill to be entitled an act to require the Governor to reside at the seat of Government; which was lost. Yeas 9—nays 12.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Gurth, Irwin, McVay, Powell, Ross, Watkins and Wood.

Those who voted in the negative are, Messrs Conner, Crawford, Evans, Hubbard, Merriwether, Moore of J. Perry, Pickett, Skinner, Smith, Vining and Walthall. So the motion was lost.

Mr Skinner introduced a bill to be entitled an act to change the times of holding the county court of Franklin county; which was read and ordered to a second reading to-morrow.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Wednesday, December 24th, 1828.*

The Senate met pursuant to adjournment.

Mr Percy from the committee on the judiciary, to which was referred a resolution instructing them to inquire into the expediency of abolishing the jurisdiction of county courts, and of establishing a court of ordinary, and to which was referred the petition of sundry persons on the subject, reported a bill to be entitled an act to abolish the jurisdiction of the county courts in part; which was read and ordered to a second reading on Saturday next.

Mr Perry from the same committee to which was referred a bill to be entitled an act to reduce into one the several acts giving fees to justices of the peace and constables, and for other purposes, reported the same with an amendment: which was concurred in. Ordered that the bill be made the order of the day for a third reading on Saturday next.

Mr Perry from the same committee to which was referred a bill to be entitled an act to amend an act entitled an act to regulate proceedings in chancery suits, passed 1<sup>st</sup> January, 1823, reported the same without amendment. Ordered that the bill be engrossed, and made the order of the day for a third reading on Saturday next.

Mr Vieriwoether from the special committee to which was referred the petition of Benjamin James and others, asking authority to emancipate certain negroes whose names are specified in the petition, reported, that they have examined the petition and documents annexed thereto; and are of opinion that no legislative act of this General Assembly, would effect the object of the petitioners. The persons whose emancipation is desired, reside within the limits of the Choctaw nation, and are represented to be free according to the laws and customs of that tribe of Indians. This General Assembly your committee believe, could pass no law operating upon persons thus situated. If they are free at present an extension of the jurisdiction of this State over the soil at present occupied by the Choctaws, would in nowise, as your committee believe, change their condition; they would still continue to enjoy the rights they now possess; they therefore beg to be discharged from the further consideration of the subject; which was agreed to.

Mr McVay from the committee on propositions and grievances to which was referred the petition and account of William McGee and Isaac Johnston, reported that the committee have examined the same, and are of opinion that one hundred and eighty five dollars of the account is just an ought to be allowed, and no more. Ordered that the report lie on the table.

Mr Moore of Jackson, from the joint committee on enrolled bills, reported as correctly enrolled, an act for the relief of Hosea Halcomb, tax collector of Jefferson county; which was accordingly signed by Mr President.

Mr Evans presented the petition of sundry citizens of Wilcox county, praying the passage of a law incorporating the Trustees of Canton Seminary or Academy, in Wilcox county, and authorizing the said Trustees to raise a certain sum of money by Lottery, for the benefit of said Academy; which was referred to a special committee, consisting of Messrs Evans, Perry and Watkins, to consider and report thereon.

Mr Evans also presented the account of the sheriff of Marengo county against the state, which was referred to the committee on accounts and claims.

On motion of Mr Vining, Ordered, that Mr Wood have leave of absence for the remainder of the week after to day.

Mr Perry, from the committee on the judiciary to which was referred a resolution instructing them to inquire into the expediency of providing by law for the establishment of regular monthly terms of the county courts for the transaction of orphans' business, asked to be discharged from the further consideration thereof, the subject having been acted on; which was agreed to.

Ordered, That the consideration of the report of the joint committee appointed to examine the returns in the office of the secretary of state, exhibiting the vote of the people on the proposed amendment of the constitution, relative to the tenure of the judges, be postponed until Tuesday next.

A bill to be entitled an act to repeal in part a resolution entitled a resolution relative to the militia laws of this state, approved on the 13th Jan. 1827, was read the third time and passed. Ordered, that the secretary acquaint the House of Representatives therewith.

A bill to be entitled an act more effectually to secure trials in capital cases by impartial juries, was taken up. Mr Perry moved to amend the bill by striking out all after the enacting clause, and substituting the following: "That in all capital cases hereafter to be tried, if an impartial jury cannot be obtained from the persons attending any court where such trial is to be held, it shall be lawful for such court, and they are severally hereby required to send the sheriff, or such other person as the court shall

appoint, to any part of the county to summon such number of persons as may be necessary to complete a jury, and in like manner may send from time to time as often as may be necessary until the jury shall be completed. Sec. 2. *And be it further enacted*, That no defendant shall hereafter be bailed in a capital case for a failure in getting a jury for his or her trial:" which was lost. Yeas 10—Nays 10.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, M'Vay, Merriwether, Moore of J. Perry, Powell, Ross, Walthall and Wood.

Those who voted in the negative are, messrs Conner, Evans, Garth, Hubbard Irwin, Pickett, Skinner, Smith, Vining and Watkins.

Mr Ross moved to amend the bill by striking out that part which requires the court, when the panel is exhausted, to appoint 3 persons of high standing to select and summon talesmen, and to make it the duty of the sheriff to perform that duty; which was carried. Mr Perry moved to strike out the 2d section of the bill, which is as follows: "*And be it further enacted*, that in the selection of a jury for the trial of any person charged with a commission of a capital crime, it shall be the duty of the court, after the person, drawn or summoned as aforesaid, is sworn to make true answers, to ask him whether he has formed an opinion founded upon a recital of the testimony of the case, and not upon rumor, as to the guilt or innocence of the prisoner at the bar; and if he reply in the affirmative he shall be rejected, but if in the negative, he shall be impennelled unless challenged;" which motion was lost. Yeas 8—Nays 11.

The yeas and nays being desired those who voted in the affirmative are, Mr President, McVay, Merriwether, Perry; Powell, Ross, Walthall and Wood.

Those who voted in the negative are Messrs Abercrombie, Conner, Evans, Garth, Hubbard, Irwin Pickett, Skinner, Smith, Vining and Watkins.

Mr Ross moved to strike from the 2d section of the bill the words 'founded upon a recital of the testimony of the case and not upon rumor;' which motion was lost. Mr Hubbard moved to reconsider the vote of the Senate on Mr Perry's motion to strike out the 2d section of the bill; which was carried. Mr Hubbard then moved to strike out the 2d section of the bill with a view of substituting another section in lieu thereof, and the question was taken on striking out and carried. Mr Hubbard then offered the following in lieu of the second section: Sec. 2. *And be it further enacted*, that in the selection of a juror for the trial of a person charged with the commission of a capital crime it shall be the duty of the court, after the person drawn or summoned as aforesaid is sworn to make true answers to such questions as may be demanded of him by the court, to ask the juror whether he has formed and expressed an opinion relative to the guilt or innocence of the prisoner at the bar. If the juror answer that he has formed and expressed an opinion, then the court shall demand of him whether the opinion he has so formed and expressed is founded upon his own knowledge of the facts having heard the testimony recited, or upon rumor. If he answers that in opinion so formed and expressed is founded upon his own knowledge of the fact, or upon having heard a recital of the testimony, then he shall be rejected; but if he answers that his opinion so formed and expressed is founded upon rumour; then the court shall demand of him whether the formation and expressing that opinion would so operate as to prevent his giving the case a fair just, and deliberate examination and coming to as just and correct a conclusion as if he never had heard any report or rumor respecting the case; and if the juror answer that he could fairly examine and deliberate upon the case, he shall be sworn unless challenged by the prisoner; which was adopted. Yeas 14—Nays 5.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Crawford, Evans, Garth, Hubbard, Irwin, McVay Merriwether, Pickett, Skinner, Smith, Vining, and Watkins.

Those who voted in the negative are Messrs Moore of J. Perry, Powell, Ross and Walthall.

Mr Pickett offered the following amendment to the bill: *And be it further enacted*, that no defendant shall hereafter be bailed in a capital case for a failure in obtaining a jury for his or her trial, which was adopted. Ordered that the bill be engrossed and made the order of the day for a third reading on Tuesday next.

The following communication was received from the Governor by Mr Thornton, Secretary of State.

EXECUTIVE DEPARTMENT TUSCALOOSA, DECEMBER 22, 1828.

The Hon. the President and Members of the Senate :

Ever since I was elected by the board and directors of the bible society of the state of Alabama, of which I have the honor to be the presiding officer, to suggest to your honorable body the propriety of passing a law which will require of the several tax collectors to incorporate, in their returns to the office of comptroller of public accounts, a report of the number of bibles and testaments in their respective counties. The society have found it difficult, and indeed impracticable under any system which they have as yet been able to devise, to ascertain the precise condition of any considerable portion of the state as regards a supply or a deficiency of the sacred scriptures. Without this information the energies of the society can neither be excited or exercised in a suitable manner. It is proper to know the wants of the country in order to stimulate to exertions which will ultimately furnish a remedy; and even if due interest were already excited, and the means of relief placed in the possession of the society, this information would be indispensable to a just and equitable distribution of their benevolence. It is confidently believed that this application to the patronage of the General Assembly, which is intended to be made in the most respectful manner, will not be considered impertinent, obtrusive or without the justification of a laudable and beneficent object. It is needless to remark that there must always subsist an intimate connexion between the moral and religious condition of the people and the purity and permanence of the government which may be instituted for their benefit. There must always subsist a reciprocal and inevitable influence. The society will most gratefully receive this assistance from the legislative authority of the state, and feel strengthened in their efforts by the evidence which it will afford them of countenance and approbation.

I beg leave to avail myself of this occasion to bring to the view of the General Assembly another subject, the notice of which has only been hastened by the wishes of the bible society. It is highly desirable that materials should be provided for an accurate statistical history of the state, showing the regular progress of agriculture, the arts, the rearing of certain animals peculiarly useful to man, and connected with the arts and improved condition of society. Manufacturing establishments, mills, spinning jennies, quantity of land in cultivation, working oxen, horses and mules reared in the state and especially sheep, must be made to occupy separate columns in the returns of the tax collectors, which would impose but a slight trouble on them, and would often prove useful subjects of reference to the political economist, forming at the same time the basis of very extensive and most accurate statistical tables obtained without the least difficulty. The tax collectors at seaports, and inland towns sending produce to markets out of the state, would be enabled with sufficient accuracy to return the annual commercial produce of the state. We should thus have the actual result combined with a knowledge of the means by which it was produced. It will be expedient to make these returns comprehensive as many objects as convenience and practicability will permit. The longer such returns continue to be made the less difficulty will be felt in the details. Schools, academies, public libraries &c ought not by any means to be omitted. Perhaps these returns need not be made every year, but at short stated periods. At the distance of a century hence these authentic documents would be considered highly curious and valuable, and even in a period not exceeding the lives of many of ourselves, would be regarded with great interest. The extreme accuracy of statistics drawn from such a source at once comprehensive and minute would give them a much higher value than those which are derived, as is usually the case, only from uncertain conjectural approximation to the actual truth, in matters which attract most attention, and omitting entirely other things important and interesting to be known. An abstract of the returns should be entered as a matter of course on the records of the executive office. Without going into greater minuteness on a subject so plain, I beg leave to recommend that the returns of the tax collectors should be required by law not only to include the taxation, but to comprise also all the items which you may think necessary to form a perfect statistical history of the state at any period. Things which may but little excite our attention, while they are passing perhaps unobserved before us, would be viewed in quite a different light by succeeding generations, who might derive lessons of practical wisdom from them: nor do I suppose that they could prove otherwise than useful in directing the present policy and civil economy of the country. Permit me in conclusion to observe that it may not hereafter be unpleasant to reflect, that our inquiries into the supply of the sacred scriptures among the people, was coeval with the first attempt to obtain and perpetuate a particular knowledge of the condition and progress of the state. I have the honor to be, most respectfully, your obedient servant. (Signed) JOHN MURPHY

On motion of Mr Smith, ordered that the communication be referred to a special

committee. Whereupon Messrs Smith, Hubbard and Crawford were appointed the committee.

A bill to be entitled an act to change the times of holding the county courts of Franklin county, was read the second time and ordered to be engrossed for a third reading on Monday next.

Mr Watkins introduced a bill to be entitled an act concerning the duties of the President of the Bank and for other purposes; which was read and ordered to a second reading on Monday next.

And then the Senate adjourned till 7 o'clock to-morrow morning.

*Thursday, December 25, 1828.*

The Senate met pursuant to adjournment.

A message from the House of Representatives, by Mr Tunstall:—Mr President, The House of Representatives concur in the amendments made by your honorable body to the bill entitled an act to emancipate certain slaves therein named.

Mr Hubbard obtained leave to introduce joint resolutions proposing amendments to the constitution of the State of Alabama; which was read a first time and ordered to a second reading on Thursday next.

Mr Hubbard moved that the Senate adjourn until Monday morning 10 o'clock; which was lost. Yeas 7—Nays 7.

The yeas and nays being desired those who voted in the affirmative are Mr President, Crawford, Hubbard, Moore of Jackson, Perry Walthall and Powell.

Those who voted in the negative are Messrs Conner, Evans, Garth, Irwin, McVay, Skinner and Vining.

Mr Hubbard renewed his motion to adjourn till Monday at half past nine; which was carried. Yeas 7—Nays 6

The yeas and nays being desired those who voted in the affirmative are, Mr President, Crawford, Hubbard, Moore of J. Perry, Walthall and Powell.

Messrs Evans, Garth, McVay, Skinner and Vining, voted in the negative. The Senate was accordingly adjourned.

*Monday, 29th December, 1828.*

The Senate met pursuant to adjournment.

Mr Vining presented the petition of sundry inhabitants of Madison county, praying that a certain part of Flint river in said county may be declared a public highway; which was read and referred to the committee on inland navigation to consider and report thereon.

Mr Perry from the committee on the judiciary to which was referred a resolution on the subject, reported a bill to be entitled an act in relation to the appointment and duties of Trustees; which was read and ordered to a second reading to-morrow.

Mr Perry from the same committee to which was referred the petition of David M. Smithson reported a bill for his relief; which was read and ordered to a second reading to-morrow.

Mr Perry from the same committee to which was referred a resolution instructing them to inquire into the expediency of providing by law for compensating jurors for their services in attending county courts, reported that it is inexpedient in the opinion of the committee to make such a provision. Ordered that the report lie on the table.

Mr McVay from the committee on propositions and grievances to which was referred the petition of Daniel Harrison, tax collector of Bibb county, reported that the committee have had the same under their consideration and are of opinion that the prayer of the petitioner ought not to be granted; which was concurred in.

Mr Garth introduced a bill to be entitled an act to improve the navigation of the Tennessee River; which was read and laid on the table.

Mr President laid before the Senate, the following communication from William Kelly, Esquire.

*Tuscaloosa, December 29th, 1828*

*Hon. Nicholas Davis.—Sir:* As the Senate have concurrent jurisdiction with the House, on questions of removal from office of a Judge, by address, &c. and from the size of the body, can attend to the subject with less prejudice to other calls of public duty than the House which is more numerous, I have thought it most advisa-

He to present the accompanying communication to that body. You will therefore confer a favour as its presiding officer, by laying it before the Senate, that such measures may be adopted as will afford the means of defence to the accused, and bring the case to a legal decision. With due respect, &c.

(Signed)

WM. KELLY.

The accompanying communication, containing complaints against the official conduct of the Hon. Reuben S. Field, John White and Anderson Crenshaw, three of the Judges of the circuit and supreme courts of this State, and asking their investigation, was ordered to lie on the table. *Ordered*, That the Secretary of the Senate furnish each of the Judges accused with a copy of the said communication.

A message from the Governor, by Mr Thornton: Mr. President. The Governor did, on the 24th inst. approve and sign an act relating to penal statutes; an act to authorize Lewis Tyns, of Axtang county, to emancipate certain slaves therein named; and an act for the relief of Hosea Halcomb, tax collector of Jefferson county; all of which originated in the Senate.

Mr President laid before the Senate, the memorial of James Files of Monroe county, contesting the right of Benjamin Hunt, to perform and exercise the duties of the office of Sheriff of said county; which was read, and on motion of Mr Watkins, referred to a special committee: whereupon, Messrs Watkins, Perry and Smith were appointed said committee.

Mr. Powell introduced a bill to be entitled an act to divorce Ambrose Sanders from his wife Elizabeth Sanders; which was read and ordered to a second reading to-morrow.

Mr. Lewis offered the following resolution: *Resolved*, That the judiciary committee be instructed to inquire into the expediency of requiring the Judges of the county courts to renew their bonds, on motion before the circuit court, by either of the securities, or any person believing the securities to be insufficient to secure the rights and interests of infants, with leave to report by bill or otherwise; which was adopted.

Mr. Evans from the special committee to which was referred the petition of Sally Halton and William Merrell, reported a joint memorial to the Congress of the United States in behalf of Sally Halton and William Merrell; which was read and ordered to a second reading to-morrow.

Mr. Evans from the special committee to which was referred the petition of sundry citizens of Wilcox county, reported a bill to be entitled an act to incorporate Clinton Academy, in Wilcox county; which was read and ordered to a second reading to-morrow.

Mr. Hubbard introduced a bill to be entitled an act to regulate judicial proceedings on foreign records; which was read and ordered to a second reading to-morrow.

Mr. Hubbard presented the account of David G. Liggon, against the State; which was referred to the committee on accounts and claims.

Mr. Vining presented the account of William Howsen, jailer of Madison county, against the State; which was referred to the committee on accounts and claims.

Mr. Hubbard introduced a bill to be entitled an act giving the same fees to the clerk of the supreme court, as are allowed by law to clerks of the circuit courts; which was read and ordered to a second reading to-morrow.

Mr. Crawford offered the following resolution: *Resolved*, That the committee on schools and colleges and school and college lands, be instructed to inquire into the expediency of making provisions for the education of the deaf and dumb in this State; which was adopted.

A message from the House of Representatives, by Mr Tuustall: Mr President. The House of Representatives have passed a bill, which originated in the Senate, entitled an act making a certain appropriation therein named. They have also passed a bill which originated in the House of Representatives, entitled an act to appoint commissioners to take charge of public property in the county of Dallas; in which they desire your concurrence.

A bill from the House of Representatives, entitled an act to appoint commissioners to take charge of public property in the county of Dallas, was read the first time and ordered to a second reading to-morrow.

An engrossed bill to be entitled an act to change the times of holding the coun

courts of Franklin county, was read the third time and passed. Ordered that the title of the bill be as aforesaid; and that it be sent to the House of Representatives for their concurrence.

An engrossed bill to be entitled an act to amend an act entitled an act to regulate proceedings in chancery suits, passed 1st January, 1823, was read the third time and passed. Ordered that the title of the bill be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

A bill to be entitled an act to reduce into one, the several acts giving fees to justices of the peace and constables, and for other purposes; was read the third time, and the question being put, shall the bill pass? it was determined in the affirmative. Yeas 17—nays 4.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Conner, Crawford, Evans, Garth, Hubbard, Irwin, McVay, Merriwether, Moore of J. Moore of M. Pickett, Skinner, Smith Vining and Watkins.

Those who voted in the negative are, Messrs Perry, Powell, Ross and Walthall. So the bill was passed. Ordered that the Secretary acquaint the House therewith.

A bill to be entitled an act to abolish in part the jurisdiction of the county courts, was read the second time and question being put, shall the bill be engrossed for a third reading to-morrow? and determined in the negative. Yeas 9—nays 12.

The yeas and nays being desired, those who voted in the affirmative are, Messrs Abercrombie, Conner, Evans, Hubbard, Irwin, Merriwether, Perry, Smith and Watkins.

Those who voted in the negative are, Mr President, Crawford, Garth, McVay, Moore of J. Moore of M. Pickett, Powell, Ross, Skinner, Vining and Walthall.

A bill to be entitled an act concerning the President of the Bank of the State of Alabama, and for other purposes, was read the second time and referred to the committee on the State Bank, to consider and report thereon.

Mr McVay offered the following resolution: *Resolved*, That with the concurrence of the House of Representatives, the two Houses of the General Assembly will, on the 10th, January next, adjourn *sine die*. Mr Powell moved that the resolution lie on the table; which was lost. The question was then put on the adoption of the resolution, and determined in the negative.

Mr Abercrombie called up the report of the committee on county boundaries, on the resolution instructing said committee to inquire into the expediency of arranging and designating the boundaries of the several counties, at the present session. Ordered that the resolution and report be recommitted to the committee on county boundaries.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Tuesday, December 30, 1828.*

The Senate met pursuant to adjournment.

Mr Perry from the committee on the Judiciary, to which was referred a resolution instructing them to inquire into the expediency of continuing in force the provisions of an act to authorize the sales of 16th sections, and for other purposes, reported a bill to be entitled an act to revive and continue in force a certain act therein named; which was read and ordered to a second reading on to-morrow.

Mr Perry from the same committee to which was referred a bill to be entitled an act more effectually to prevent the evil practice of duelling, reported the same as amended; which was concurred in. Ordered that the bill lie on the table.

Mr Conner from the special committee to which was referred a resolution on the subject, reported a joint memorial to the Congress of the United States, asking a donation of the unsold lands within this State, for the purpose of connecting the Tennessee with the Coosa and Tombcbee rivers; which was read and ordered to second reading to-morrow.

A bill to be entitled an act to appoint commissioners to take charge of the public property in the county of Dallas, was read the second time; and the rule requiring bills to be read on three several days, being dispensed with, the bill was read the third time forthwith, and passed. Ordered that the Secretary acquaint the House of Representatives therewith.

Mr McVay introduced a bill to be entitled an act to amend the act incorporating

the town of Florence; which was read and ordered to a second reading to-morrow.

Mr Crawford introduced a bill to be entitled an act supplementary to an act entitled an act to incorporate the Cahawba Navigation Company; which was read and ordered to a second reading to-morrow.

An engrossed bill to be entitled an act more effectually to secure trials in capital cases by impartial juries; was read the third time and the question being put, shall the bill pass? it was determined in the affirmative. Yeas 11—nays 8.

The yeas and nays being desired, those who voted in the affirmative are, Messrs Abercrombie, Conner, Crawford, Evans, Garth, Hubbard, Irwin, Pickett, Skinner, Vining and Watkins.

Those who voted in the negative are, Mr President, McVay, Merriwether, Moore of J. Moore of M. Perry, Walthall and Wood. So the bill was passed. Ordered that the title be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

Ordered, That the consideration of the report of the joint committee of the two Houses appointed to examine the returns in the office of the Secretary of State, exhibiting the vote of the people of this State, on the proposed amendment of the constitution relative to the tenure of the Judges, be further postponed till to-morrow.

A bill to be entitled an act to incorporate Canton Academy in Wilcox county, was read the second time and ordered to be engrossed for a third reading to-morrow.

Joint resolutions proposing amendments to the constitution of the State of Alabama, relative to the tenure of the Judges, were read the second time and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act to divorce Ambrose Sanders from Elizabeth Sanders; was read the second time and referred to the committee on divorce and alimony, to consider and report thereon.

Mr Powell presented the decree of the circuit court of Tuscaloosa county, exercising chancery jurisdiction, divorcing Ambrose Sanders from Elizabeth Sanders; which was referred to the same committee.

A bill to be entitled an act in relation to the appointment and duties of Trustees; was read the second time and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act for the relief of David M. Smithson, was read the second time and laid on the table.

A bill to be entitled an act to regulate judicial proceedings in foreign records, was read the second time and referred to the judiciary committee, to consider and report thereon.

A bill to be entitled an act giving the same fees to the clerk of the supreme court, as are allowed by law to clerks of the circuit courts, was read the second time, and on Mr Garth's motion, referred to a special committee, consisting of Messrs Powell, Hubbard and Crawford, to consider and report thereon.

A message from the House of Representatives, by Mr Tunstall: Mr President, The House of Representatives have passed a bill, which originated in their House, entitled an act to alter the times of holding the county court of Marengo county, and Monroe county court; in which they desire your concurrence.

A bill from the House entitled an act to alter the time of holding the county court of Marengo county, and Monroe county court; was read the first time; and the rule requiring bills to be read on three several days being dispensed with, the bill was read the second time and amended on Mr Evitt's motion; and the rule being further dispensed with, the bill was read the third time and passed. Ordered, that the Secretary acquaint the House therewith.

Joint memorial to the Congress of the United States, in behalf Sally Haltem and William Merrell, was read a second time and ordered to be engrossed for a third reading to-morrow.

Mr Hubbard presented the accounts of the sheriff of Lawrence county against the State; which were referred to the committee on accounts and claims.

Mr Moore of J. introduced a bill to be entitled an act to change the times of holding the county courts of Jackson county; which was read and ordered to a second reading to-morrow.

Mr Powell introduced a bill to be entitled an act more effectually to prevent



bonds from being practised on the treasury by persons holding claims against the state; which was read and ordered to a second reading to-morrow.

Mr Crawford moved to reconsider the vote of the Senate on the question to adopt the resolution offered yesterday by Mr McVay, proposing, with the concurrence of the House, to adjourn *sine die* on 10th Jan. next; which was carried. Mr Powell moved that the resolution lie on the table; which was carried. Yeas 13—Nays 9.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Crawford, Evans, Irwin, Merriwether, Moore of J. Perry Pickett, Powell, Vining, Watkins and Wood.

Those who voted in the negative are, messrs Conner, Garth, Hubbard, M'Vay Moore of m. Ross, Skinner, Smith and Walthall.

Mr Hubbard introduced a bill to be entitled an act for the relief of sheriffs and other officers; which was read and ordered to a second reading to-morrow.

And then the Senate adjourned till to-morrow morning at 10 o'clock

*Wednesday, December 31, 1828.*

The Senate met pursuant to adjournment.

Mr Moore of J. from the joint committee on enrolled bills, reported as correctly enrolled an act making a certain appropriation therein named; an act for the relief of Andrew O. Horn, taxcollector of Lawrence county; which were accordingly signed by Mr President.

Mr Watkins, from the special committee to which was referred the memorial of James Files, reported that the committee have had the same under consideration and are of opinion that any legislative remedy they might afford would be retrospective in its operation and therefore unconstitutional. They are of opinion further that if the courts of law cannot afford him redress it is entirely out of the power of the legislature; wherefore, they pray to be discharged from the further consideration of the subject; which was agreed to.

Mr Ross presented the petition of John Battiste Merceine, of Mobile, praying authority to emancipate certain slaves; which was read and referred to a special committee, consisting of messrs Ross, Watkins and Perry, to consider and report thereon.

Engrossed bills to be entitled an act to incorporate Canton academy in the county of Wilcox; an act in relation to the appointment and duties of trustees; were severally read the third time and passed. *Ordered*, that the titles of the bills be as aforesaid, and that they be sent to the House of Representatives for their concurrence.

*Ordered*, That the joint resolutions proposing amendments to the constitution of the state of Alabama, relative to the tenure of the judges, lie on the table till to-morrow.

*Ordered*, That the consideration of the report of the joint committee appointed to examine the returns in the office of the secretary of state, exhibiting the vote of the people of this state on the proposed amendment of the constitution, relative to the tenure of the judges, be further postponed till to-morrow.

Engrossed joint memorial to the Congress of the United States in behalf of Sally Halton and William Merrell, was read the third time and passed. *Ordered*, that the secretary acquaint the House of Representatives therewith.

A bill to be entitled an act to amend the act incorporating the town of Florence, was read the second time and ordered to be engrossed for a third reading to-morrow.

Joint memorial to the Congress of the United States asking a donation of the unsold lands within the state for the purpose of connecting the Tennessee with the Coosa and Tombekbe rivers, was read the second time and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act to change the times of holding the county courts of Jackson county, was read the second time. Mr McVay offered an amendment to the bill changing the time of holding the county court of Lauderdale county; which was adopted. Mr Conner offered an amendment to the bill authorizing the county court of Blount county to sit twelve days if business so long require; which was adopted. *Ordered*, that the bill be engrossed and made the order of the day for a third reading to-morrow.

The following communication was received from the Governor:

EXECUTIVE DEPARTMENT, TUSCALOOSA, DECEMBER 29, 1828.

The Hon. the President and Members of the Senate :

Gentlemen—I have just received the the resignation of Philip McLoskey, Esq. of the city of Mobile, recently appointed by the General Assembly one of the Wardens of that port. I have the honor to be, most respectfully, your ob't servant.

JOHN MURPHY.

*Ordered.* That the communication lie on the table.

The following communication was also received from the Governor, by Mr Thornton :

EXECUTIVE DEPARTMENT, TUSCALOOSA, DEC. 30, 1828.

The Hon. the President and Members of the Senate :

Gentlemen—I have the honor to inform you, that in pursuance of an act of the General Assembly, entitled “An act authorizing the Governor to liquidate and settle the accounts between this state and the state of Mississippi,” a correspondence was opened with the Executive of the state of Mississippi on the subject of those accounts, which has resulted in the adjustment of them, in conformity with the provisions of the above recited act. Therewith transmit a copy of the agreement, from which it will appear that legislative interposition on the part of both states, is necessary to consummate the final settlement of these accounts. It is agreed by the authorized agent of the state of Mississippi, that all bonds and evidences of debt (now in possession) due to the treasury, from the defaulting taxcollectors who resided in those counties now composing a part of the state of Alabama, at the time of the separation of Alabama from Mississippi, shall be assigned and transferred to the state of Alabama; and it is agreed by the agent of the state of Alabama that in consideration of such assignment and transfer, the state of Alabama will quit claim and forever release the state of Mississippi from all demands against its treasury, arising out of the 9th section of the act of Congress, entitled an act to establish a separate territorial government in the eastern part of the Mississippi territory, approved 3d March, 1817. I beg leave to invite your early attention to this subject. I have the honor to be, most respectfully, your ob't serv't.

JOHN MURPHY.

*Ordered.* That the communication, together with the accompanying document, be referred to the committee on the judiciary to consider and report thereon.

A message from the House of Representatives, by Mr Tunstall: Mr President, The House of Representatives have passed a bill which originated in the Senate entitled an act to incorporate the Valley creek academy in the county of Dallas. They have also passed a bill which originated in the House of Representatives entitled an act making a further appropriation for the pay of the members of the present General Assembly: in which they desire your concurrence.

A bill from the House entitled an act making a further appropriation for the pay of the members of the present General Assembly, was read; and the rule requiring bills to be read on three several days being dispensed with by four-fifths of the members present, the bill was read the second and third time forthwith and passed. *Ordered.* that the secretary acquaint the House of Representatives therewith.

A bill to be entitled an act more effectually to prevent fraud from being practised on the Treasury by persons holding claims against the State was read the second time. Mr Hubbard moved that the further consideration of the bill be indefinitely postponed, which was lost. *Ordered* that it be referred to the committee on accounts and claims to consider and report thereon.

A bill to be entitled an act for the relief of sheriffs and other officers; and an act to revive and continue in force a certain act therein named, were severally read the second time and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act supplementary to an act entitled an act to incorporate the Cahowba Navigation Company was read the second time and referred to the committee on inland navigation.

On motion of Mr Abercrombie, *Ordered* that Mr Irwin have leave of absence for the remainder of the Session after Saturday next.

Mr Smith offered the following resolution: *Resolved* that the judiciary committee be instructed to inquire into the constitutionality of the different acts establishing state roads, as said acts make no provision for indemnity to persons through whose

lands such roads might pass, and make such amendments as they in their wisdom may think best, and report by bill or otherwise; which was adopted.

Mr Garth from the committee on divorce and alimony to which was referred the bill entitled an act to divorce Ambrose Sanders from Elizabeth Sanders, reported the same without amendment. Ordered that the bill be engrossed and made the order of the day for a third reading to-morrow.

Mr Vining offered the following resolution: *Resolved* that the judiciary committee be instructed to inquire into the expediency of giving further time to those Physicians who have failed to enrol their names in accordance with a former law, with leave to report by bill or otherwise; which was adopted.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Thursday, 1st January, 1829.*

The Senate met pursuant to adjournment.

Mr McVay presented the petition of sundry inhabitants of the 2d township and ninth Range in the county of Lauderdale, praying that Simeon Perry, Charles Mason and John Cane may be released from the payment of rent for the 16th section of said township, and that they may be permitted to continue in possession of the same till the 1st January next, in consideration of certain improvements made thereon; which was referred to the committee on schools colleges, and school and college lands.

Mr Perry from the committee on the judiciary to which was referred a resolution instructing them to inquire into the expediency of requiring by law tax collectors to receive just claims against their respective counties in discharge of county taxes, reported that it is inexpedient to pass such a law; which was concurred in.

Mr Perry from the same committee to which was referred a bill to be entitled an act to regulate judicial proceedings on foreign records, reported the same without amendment. Ordered that the bill be engrossed and made the order of the day for a third reading on to-morrow.

Mr Abercrombie from the committee on county boundaries to which was referred the resolution instructing them to inquire into the expediency of attaching so much of Dallas and Wilcox counties to Montgomery, as would give territory enough to form two constitutional counties of Montgomery, reported that the committee have had the same under consideration and have instructed him to report that it is inexpedient at this time to make such division. Ordered that the report lie on the table.

Mr Abercrombie from the same committee made the following report: The committee on county boundaries to which was referred a resolution instructing them to inquire into the expediency of dividing Dallas county so that the Alabama river shall be the boundary line of the county or counties so to be formed, have had the same under consideration and have instructed me to report that it is inexpedient to make such division. Ordered that the report lie on the table.

Mr Abercrombie from the same committee to which was referred the petition of sundry citizens of Walker county praying to be added to Lawrence, reported that it is inexpedient in the opinion of the committee to make any alteration in the boundaries of said counties at the present session. Ordered that the report lie on the table.

Mr Abercrombie from the same committee to which was referred a resolution requiring them to inquire into the expediency of arranging and designating the boundaries of the several counties in this State at the present session, reported that it is inexpedient in the opinion of the committee to make any general arrangement at present. Ordered that the report lie on the table.

Mr Abercrombie from the same committee to which was referred the resolution in relation to the division of Greene county so as to make the Black Warrior river the line, reported that the committee have had the same under consideration and have instructed him to report that it is inexpedient to make such division. Ordered that the report lie on the table.

Mr Ross from the committee on the State Bank to which was referred a bill to be entitled an act concerning the President of the Bank of the State of Alabama and to increase his duties and salary, reported the same without amendment. Ordered that the bill lie on the table.

Mr Conner introduced a bill to be entitled an act to extend the laws of Alabama to the lands ceded by the Treaty of the Indian Springs; which was twice read and committed to the judiciary committee to consider and report thereon.

Mr Powell from the committee on schools and colleges, and school and college lands to which was referred a resolution instructing an inquiry into the expediency of making provision for the education of the deaf and dumb in this state, reported that inasmuch as there is no particular information before your committee as to the number of the deaf and dumb in the State and consequently no necessity of making the provision at this time. I am instructed by said committee to report to the Senate that at the present session, it is inexpedient to legislate on the subject; and therefore pray to be discharged from the further consideration thereof; which was agreed to.

A message from the House of Representatives by Mr Tunstall:—Mr President, The House of Representatives have passed a bill which originated in the Senate entitled an act to amend an act entitled an act to incorporate the town of Fuscaloosa, approved January the 12th, 1828.

Mr Crawford introduced a bill to be entitled an act to change the mode of compensating jurors; which was read and ordered to a second reading to-morrow.

Engrossed joint memorial to the congress of the United States, requesting that the unappropriated lands within the State of Alabama may be ceded to the state for the purpose of internal improvement therein, was read the third time and passed. *Ordered*, that it be conveyed to the House of Representatives for their concurrence.

Mr Wood moved to take up the communication from William Kelly containing complaints against the official conduct of Judges Saffold, White and Crenshaw, and that fifty copies thereof be printed; which was carried. Yeas 12—Nays 10.

The yeas and nays being desired, those who voted in the affirmative are, messrs Conner, Garth, Hubbard, Irwin, McVay, Moore of J. Moore of m. Perry, Skinner, Smith, Vining and Wood.

Those who voted in the negative are, Mr President, Abercrombie, Crawford, Evans, Merriwether, Pickett, Powell, Ross, Walthall and Watkins.

Mr Wood moved to reconsider the vote on his motion to take up the communication from William Kelly, Esq. and cause fifty copies thereof to be printed; which was carried. Mr Hubbard then moved that twenty-five copies of the communication be printed; which was carried. Yeas 13—Nays 9.

The yeas and nays being desired, those who voted in the affirmative are, messrs Conner, Garth, Hubbard, Irwin, McVay, Moore of J. Moore of m. Perry, Skinner, Smith, Vining, Watkins and Wood.

Those who voted in the negative are mr President, Abercrombie, Crawford, Evans, Merriwether, Pickett, Powell, Ross and Walthall.

Engrossed bills of the following titles, to wit: an act to change the times of holding the county courts of Jackson county, and for other purposes; an act to divorce Ambrose Sanders from his wife Elizabeth Sanders; an act for the relief of sheriffs and other officers; an act to revive and continue in force a certain act therein named; and an act to amend an act entitled an act incorporating the town of Florence, were severally read the third time and passed. *Ordered*, that the titles of the bills be as aforesaid, and that they be sent to the House of Representatives for their concurrence.

And then the Senate adjourned till half past 2 o'clock this evening.

*Evening Session*—The Senate met pursuant to adjournment.

Mr Smith presented the following certificate of the coroner of Dallas county; which was ordered to be spread upon the Journal.

*The State of Alabama, Dallas County:* I, William W. Olds, coroner and returning officer in and for the county of Dallas at the last August election, there being at that time no Sheriff for said county, do hereby certify that the list of the names of the voters by me forwarded and deposited in the office of the Secretary of State, in relation to the tenure of the Judges' office, is the true list of the names of the voters and of the yeas and nays on that question; and that there were no silent votes and that the list contains the names of all the persons in said county that voted for Re-

representatives in said county, and that there were for the amendment 1194, and 65 against it. Given under my hand and seal, this 31st December, 1828.

Wm. W. OLDS, coroner. [seal.]

Mr Moore of J. from the committee on enrolled bills, reported as correctly enrolled, an act making a further appropriation for the pay of the members of the present General Assembly, which was accordingly signed by Mr President.

Mr Hubbard offered the following resolutions: *Resolved*, that the report of the joint committee of the two Houses on the subject of the tenure of the Judges' office does exhibit sufficient constitutional evidence that a majority of all the persons of this state that voted at the last August election for Representatives did vote in favor of the proposed amendment of the constitution in relation to the tenure of the Judges' office. *Resolved*, that it is expedient now to proceed to ratify said proposed amendment, that the same may become part of the constitution of this state.

After some time spent in the consideration of the resolutions, the Senate adjourned till to-morrow morning at 10 o'clock.

Friday, January 2, 1829.

The Senate met pursuant to adjournment.

Mr Moore of J. presented the record and proceedings of the circuit court of Jackson county, divorcing Robert C. Price from Elizabeth Price; which was *referred* to the committee on divorce and alimony.

Mr Merriwether offered the following resolution: *Resolved*, that the special committee to whom was *referred* the communication from his excellency the Governor, recommending the passage of a law requiring the tax collectors to collect and return certain statistical information, be instructed to inquire into the expediency of requiring a return to be made of the number of the deaf and dumb persons in this state; which was adopted.

A message from the House of Representatives, by Mr. Tunstall:—Mr President, the House of Representatives have read three several times, and passed a bill which originated in the Senate, entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named, and made sundry amendments thereto, which are herewith shown; and in which they desire the concurrence of the Senate. *Ordered*, that the bill entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named, together with the amendments made thereto by the House of Representatives, be committed to the special committee appointed on so much of the Governor's annual communication as relates to the donation of public lands made by the Government of the United States to this State, for the purpose of removing the obstructions to the navigation of certain rivers, to examine and report thereon.

The Senate resumed the consideration of the following resolutions, offered yesterday by Mr Hubbard: 1st *Resolved*, that the report of the joint committee of the two Houses on the subject of the tenure of the Judges' office, does exhibit sufficient constitutional evidence that a majority of all the persons of this state that voted at the last August election for Representatives did vote in favor of the proposed amendment of the constitution in relation to the tenure of the Judges' office. 2d *Resolved*, that it is expedient now to proceed to ratify said proposed amendment that the same may become a part of the constitution of this state. The question being put on the adoption of the first resolution, it was determined in the affirmative. Yeas 12—Nays 9.

The yeas and nays being desired those who voted in the affirmative are, Messrs Canner, Evans, Garth, Hubbard, Irwin, Moore of Jackson, Moore of Ma. Perry, Pickens, Ross, Skinner and Wood.

Those who voted in the negative are Mr President, Abercrombie, Crawford, McVay, Merriwether, Powell, Vining, Walthall and Watkins.

The question was then put on the adoption of the second resolution offered by Mr Hubbard, and carried. Yeas 17—Nays 5.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Canner, Crawford, Evans, Garth, Hubbard, Irwin, Merriwether, Moore of J. Moore Ma. Perry, Pickens, Ross, Skinner, Walthall and Wood.

Those who voted in the negative are, Messrs McVay, Powell, Vining and Watkins.

The Senate then proceeded to the consideration of the proposed amendment of the constitution, relative to the tenure of the Judges' office; and the joint resolutions proposing amendments to the constitution of the State of Alabama being read the third time, the question was put, Shall the resolution pass, and the proposed amendments be ratified? and determined in the negative. Yeas 12—Nays 10.

The yeas and nays being required those who voted in the affirmative are, Messrs Conner, Evans, Garth, Hubbard, Irwin, Moore of J. Perry, Pickett, Ross, Skinner, Smith and Wood.

Those who voted in the negative are, Mr President, Abercrombie, Crawford, McVay, Merriwether, Moore, of Ma. Powell, Vining, Walthall and Watkins; so the proposed amendments were rejected, a majority of two-thirds being necessary.

Mr Abercrombie called up the resolution offered by Mr Pickett on the 22d Dec. last, instructing the judiciary committee to inquire into the expediency of so altering the constitution of the State of Alabama, that the Judges of the circuit and county courts of this State shall be elected every four years, and that they be instructed to report resolutions to the end, that the same may be acted on at the present Legislature and submitted to the people at the next general election. Mr Ross moved to strike out of the resolution after the word *Resolved*, and to insert the following:—that the judiciary committee be instructed to inquire into the expediency of so amending the constitution of this State as to limit the tenure of the judges to a term not exceeding seven years, with leave to report by resolutions or otherwise. Mr Garth moved to amend the proposed amendment with the following 'and to have biennial sessions of the General Assembly,' which was lost. Yeas 10—Nays 12.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Conner, Garth, McVay, Moore of Ma. Powell, Skinner, Vining, Watkins and Wood.

Those who voted in the negative are, Messrs Abercrombie, Crawford, Evans, Hubbard, Irwin, Merriwether, Moore of Jackson, Perry, Pickett, Ross, Smith and Walthall. The question was then put on the adoption of the amendment offered by Mr Ross to the resolution and carried. The resolution as amended was then adopted.

Mr Walthall moved to take up the joint resolutions proposing amendments to the constitution of the State of Alabama so as to have biennial sessions of the General Assembly; which was carried. Yeas 15—Nays 6.

The yeas and nays being desired those who voted in the affirmative are, Mr President, Abercrombie, Conner, Garth, Hubbard, Irwin, McVay, Moore of Ma. Perry, Pickett, Skinner, Vining, Walthall, Watkins, and Wood.

Those who voted in the negative are, Messrs Crawford, Evans, Merriwether, Powell, Ross and Smith. Ordered that the resolutions be re-committed to the committee on the judiciary to consider and report thereon.

An engrossed bill to be entitled an act to regulate judicial proceedings on records from other states, was read a third time and passed. Ordered, that the title of the bill be as aforesaid, and that it be sent to the House for their concurrence.

A bill to be entitled an act to change the mode of compensating jurors, was read the second time and referred to the committee on the judiciary to consider and report thereon.

Mr Abercrombie from the committee on county boundaries to which were referred a resolution instructing them to inquire into the expediency of so changing the limits of Calhoun county as to make the Alabama river the Western boundary line, reported that it is inexpedient in the opinion of the committee to make the change proposed. Ordered that the report lie on the table.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Saturday, 3d January, 1829.*

The Senate met pursuant to adjournment.

Mr Moore of m. presented the account of the sheriff of Marion county against the State; which was referred to the committee on accounts and claims.

Mr Perry from the committee on the judiciary to which was referred joint resolutions proposing amendments to the constitution of the state of Alabama, so as to have biennial sessions of the General Assembly, reported the same as amended;

which was concurred in. Mr Perry moved further to amend the resolutions by striking out "four years," the proposed term of service of the Senators, and to insert "two years" as their term of service; which was lost. Yeas 8—Nays 13.

The yeas and nays being desired, those who voted in the affirmative are, messrs Comer, Irwin, M'Vay, Moore of m. Perry, Pickett, Skinner and Walthall.

Those who voted in the negative are, Mr President, Abercrombie, Crawford, Evans, Garth, Hubbard, Merriwether, Moore of J. Powell, Ross, Smith, Vining and Watkins.

*Ordered*, that the resolutions be engrossed and made the order of the day for a 3d reading on Monday next.

Mr Perry from the same committee to which was referred a resolution instructing them to inquire into the expediency of so amending the constitution of this state as to limit the tenure of Judges to a term not exceeding seven years, reported joint resolutions proposing amendments to the constitution of this state, so as to limit the tenure of the Judges to six years; which were read and ordered to a second reading on Monday next.

Mr Perry from the same committee to which was referred a bill to be entitled an act to extend the laws of Alabama to the lands ceded by the treaty of Indian Springs, reported the same with an amendment; which was concurred in. On motion of Mr Abercrombie the bill was recommitted to a special committee consisting of messrs Abercrombie, Perry and Watkins, to examine and report thereon.

Mr Moore of J. from the joint committee on enrolled bills, reported as correctly enrolled an act to amend an act entitled an act to incorporate the town of Tuscaloosa &c. approved January 12th, 1828; which was accordingly signed by Mr President.

Mr Powell from the committee on schools and colleges, and school and college lands, to which was referred a resolution of the Senate, instructing an inquiry into the expediency and propriety of so amending the sixth section of an act entitled "an act to authorize the sale of sixteenth sections and for other purposes," passed the 15th January, 1828, that the interest on any money paid or that may be hereafter paid into the Bank by commissioners of sixteenth sections, shall be considered reinvested as principal at the end of every quarter if not drawn out by said commissioners, reported that the committee have had the same under consideration and have instructed him to report: that inasmuch, as it may be of importance for the establishment of schools for the commissioners of the sixteenth sections to have the interest thus accruing, more immediately at their command, it is inexpedient to change the existing law; which was concurred in.

Mr Smith from the special committee to which was referred a resolution of the Senate on the subject, reported a joint memorial to the Congress of the United States, praying an extension of the Federal judiciary circuit system, to our western States; which was read and ordered to a second reading on Monday next.

The following communication was received from the Governor, by Mr Thornton  
EXECUTIVE DEPARTMENT; TUSCALOOSA, JANUARY 2d, 1829.  
The Hon. President and Members of the Senate.

Gentlemen: The recent report of the Adjutant General, shewing a continued neglect in making returns to him, by which alone he could be enabled to make a full return of the strength and condition of the militia of the State, indicates the necessity of more rigorous enforcement of existing provisions, or of imposing new sanctions, to insure from the officers the discharge of their duties. The Adjutant, of Regiments, the assistant Adjutants General, and the Adjutants General of Division, are the officers concerned in making out annual returns of the strength of the militia, to the Adjutant General of the State, whose duty it is to consolidate the whole and make a return to the General Assembly. If any of these officers neglect their duty, the return must be incomplete and unsatisfactory. We are losing annually a considerable amount of arms from the General Government, because the public arms are distributed according to the militia returns of the several States, and our returns are always greatly below the actual strength of the militia. Nothing can place this matter in a stronger light than the fact, that the return of 1822 or of 1823, is the largest return that has ever been made to the General Government from this State and upon which our quota of arms has been received. It was notorious to the ord-

nance department, that our strength could not be decreasing, and the largest return was in justice resorted to, is apportion our quota. The returns are every year more incomplete, threatening a general inattention to making any return at all. I beg leave therefore to recommend that high penalties be imposed upon all officers for neglect of duty concerned in making their returns, and that it be made the duty of public and responsible officers to enforce them. Through the legal agency of the Solicitors of the several circuits, the Adjutant General of the State might enforce the penalties against the Adjutant General of Division, the Majors General against the assistant Adjutants General, and the Brigadiers against the Adjutants, of Regiments. A proper responsibility should thus be carried down through every grade of office. If the Majors General, or the Brigadiers, or the Adjutant General of the State, should neglect or refuse to perform their duty in this respect, it should be made the duty of the commander in chief to enforce the penalties imposed on them. This system may appear to be more formidable in the recommendation than it will be found to be in practice. When the officers see the necessity of discharging their duty and have a few times attended to it, the penalties of the law will be but seldom incurred; something more cogent than their circulars or threats of arrest will be found to be unavoidable. I have the honor to transmit a communication made to this department by the Adjutant General, and earnestly recommend that his compensation be made commensurate with his duties, and that his duties and powers be so increased as effectually, to secure the objects which the State contemplated in the establishment of such an office.

While on the subject of the militia I beg leave to make several other recommendations, which are considered to be either highly useful or altogether indispensable. Doubts have arisen whether men are required by law to carry arms while attending musters, and the law ought to be so explained as to make it clearly their duty to do so. Without arms it is conceived impossible that any one should be animated by the true spirit of a soldier, or feel any desire or emulation to acquire military knowledge, so little called for by his appearance and condition. To attend to military duties, under such circumstances involves incongruity, which excites ridicule. His arms have ever been the pride of the soldier, and without them he can neither acquire or wish to acquire the exact discipline which ought to distinguish him. This single error would be fatal to the discipline of the militia. Subaltern officers are now exempt from a battalion and regimental drills, previous to battalion and regimental reviews.

The exemption defeats the object of the necessary drills—The commissioned officers are not sufficiently numerous to form a body large enough to learn any thing, even of company drills. It is also equally necessary that non-commissioned officers should be instructed as almost any others. They should therefore be required to attend the drills, which are designed to impart knowledge absolutely necessary to all the officers. The uniform of an officer is frequently a matter of burdensome expense, and at the same time without uniform he cannot assume the appearance or support the dignity of his station. The officers hereafter elected might be required in a given time to uniform themselves, in a plain, neat and cheap manner with the domestic manufactures of the State, made and turned up, in suitable military mode. The uniform ought to be prescribed by law, and all should be made to conform to it, or such only as might choose that kind of uniform in preference to the uniform now required by law. Every officer should be required to procure the arms necessary for an officer of his grade; and suitable penalties should be imposed and enforced for any neglect or refusal. Much trouble arises from giving notices in cases of delinquency at company musters, and frequent excuses are made that the notices were not served, or not served in some respect according to law. To obviate this inconvenience, and to lessen the burdens of military service in this respect, it might be expedient to designate the times of holding company musters, say for example, on the first Monday or Saturday in January, in April, in July and in September. These or similar times would soon become notorious, and never escape the recollection of the companies. It would be improper to prescribe stated days, for battalion and regimental musters, as that would interfere with the reviews of the commanding officers.

The militia law requires some amendment in regard to the appeals which are allowed in cases of delinquency in attending upon musters; an appeal can be had from a regimental court martial, to what is termed a general court martial, which is sup-



posed to mean the same thing as a brigade court martial in such instances; these higher courts are never assembled to try appeals in cases of delinquency, and an appeal to them is known to be tantamount to an acquittal; hence frequent appeals are made. The law is defective, because it does not require that these courts should be assembled at regular and stated periods, nor is any way pointed out by which they can be assembled at all on such occasions, as business of appeals from the other courts. It would seem to be more expedient, to make final the decision of the regimental courts in all cases of such delinquency, because it would be difficult and troublesome, without any correspondent utility to assemble annually, these general courts martial. It has been thought by officers of experience that troops of Cavalry require an additional officer, a second Lieutenant. I am inclined to believe that this change is necessary to give a perfect command to such corps, and recommend the subject to the consideration of the General Assembly. It is with great reluctance that I offer these recommendations; when your time is so much occupied in the discussion and adjustment of other public objects of greater, or at least more immediate importance. Still the discipline and efficient organization of the physical force and defence of the country, can never cease to be a matter of essential interest. The alterations and amendments which have been proposed it is conceived will substantially amend the existing laws, and may serve without much addition, until more time can be devoted to a general revision; which however ought not to be attempted until all the defects are clearly seen from experience. It affords great pleasure, that we receive testimony from other States, if testimony should be thought wanting, that the discipline of the militia, which in fact composes the foundation of our security is not to be regarded as a visionary and fruitless project. I have the honor to be most respectfully,  
Your Obedt Serv't.

JOHN MURPHY.

*Ordered*, that the communication, together with the accompanying document, be referred to the military committee to consider and report thereon.

Mr Abercrombie from the special committee to which was referred a bill to be entitled an act to extend the laws of Alabama to the lands ceded by the treaty of Indian Springs, reported the same as amended; which was concurred in. *Ordered*, that the bill lie on the table till this evening.

A message from the House of Representatives by Mr Tunstall:—Mr President, The House of Representatives have passed a bill which originated in the Senate entitled an act to change the mode of printing and distributing the Acts and Journals of the General Assembly, and for other purposes, and have amended the same by striking out all after the enacting clause and substituting a section in lieu thereof; and also, by amending the title of the bill with the words "increase the salary of the state printer;" in which they desire the concurrence of the Senate. They have passed a bill which originated in their House, entitled an act prohibiting certain persons from exercising the powers of justices of the peace and constables of this state; in which they also desire your concurrence.

*Ordered*, that the bill entitled an act to change the mode of printing and distributing the acts and journals of the General Assembly and for other purposes, together with the amendments made thereto by the House, be referred to the committee on the public printing.

Mr Hubbard from the special committee to which was referred the bill entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named, together with the amendments made thereto by the House of Representatives, reported the same with the proposed amendments to the Senate. The Senate proceeded to the consideration of said amendments. Mr Pickett moved that the Senate disagee to the amendment made by the House to the bill by striking out "Courtland," the place at which the bill provides the land office shall be located, and inserting an amendment providing for the location of the offices of Register and Receiver of the land office by joint vote of both Houses; which was carried. Yeas 12—Nays 10.

The yeas and nays being desired those who voted in the affirmative are, messrs. Conner, Crawford, Garth, Hubbard, Irwin, Merriwether, Moore of m. Perry, Pickett, Skinner, Smith and Watkins.

Those who voted in the negative are Mr President, Abercrombie, Evans, M'Vay, Moore of J. Powell, Ross, Vining, Walthall and Wood.

So the amendment was disagreed to. *Ordered*, that the Senate concur in the several amendments made by the House of Representatives to the second and fourth sections of the bill. Mr Hubbard moved that the Senate disagree to the amendment made by the House to the 5th section of the bill, by striking out the following words: "that the lands of the first class shall by said commissioners be valued at from six dollars to ten dollars per acre according to the locality or other cause of value; lands of the second class from four dollars to six dollars per acre; and lands of the third class shall be valued from the minimum price of said lands to three dollars per acre according to the value; and if the said commissioners shall be of opinion that any of the said lands being of the first class and contiguous to the canal or a town or from other local causes shall be worth more than ten dollars per acre, they shall assess what they esteem its true value, and the price they fix upon them shall be the price at which they are to sell," and by substituting in lieu thereof the following: "that the said lands shall be divided according to value into four classes; the first class of which shall be valued at not less than eight dollars per acre; lands of the second class at not less than five dollars per acre; lands of the third class at not less than three dollars, and lands of the fourth class at not less than the minimum price per acre; but the said commissioners shall assess the true value of each particular half quarter section, or other legal subdivision of said land, which shall be the price at which they shall respectively sell;" which motion was carried. Yeas 16—Nays 6.

The yeas and nays being desired, those who voted in the affirmative are, Mr. President, Abercrombie, Conner, Crawford, Evans, Hubbard, Irwin, McVay, Merriwether, Moore of m. Pickett, Powell, Ross, Skinner, Smith and Wood.

Those who voted in the negative are, messrs Garth, Moore of J. Perry, Vining, Walthall and Watkins.

So the amendment was disagreed to. *Ordered*, that the bill, together with the remainder of the amendments, lie on the table till Monday next.

Mr Abercrombie called up the bill to be entitled an act to extend the laws of Alabama to the lands ceded by the treaty of the Indian Springs. The rule requiring bills to be read on three several days being dispensed with, and the bill being considered as engrossed, was read the third time and passed. Yeas 11—Nays 9.

The yeas and nays being desired, those who voted in the affirmative are, Mr. President, Abercrombie, Conner, Evans, Hubbard, Irwin, Perry, Ross, Smith, Walthall and Wood.

Those who voted in the negative are, messrs Crawford, Garth, McVay, Merriwether, Moore of J. Moore of m. Pickett, Powell and Vining.

*Ordered*, that the title of the bill be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

And then the Senate adjourned till Monday morning, at 10 o'clock.

*Monday, January 5, 1829.*

The Senate met pursuant to adjournment.

Mr Ross, from the special committee to which was referred the petition of John Battiste Merciene, reported a bill to be entitled an act to emancipate certain slaves therein named; which was read and ordered to a second reading to-morrow.

Mr Crawford, from the committee on public printing, to which was referred a bill to be entitled an act to change the mode of printing and distributing the acts and journals of the General Assembly, and for other purposes, together with the amendments made thereto by the House of Representatives, reported an amendment to the amendments made by the House to the bill; which was concurred in. The amendments as amended were then agreed to. *Ordered*, that the secretary acquaint the House of Representatives therewith.

Mr Ross offered the following resolution: *Resolved*, that the committee on the state bank be instructed to inquire into the propriety of repealing an act, approved January 12, 1828, entitled an act to increase the capital of the bank of the state of Alabama; which was rejected.

On motion of Mr Powell, ordered that Mr Ross be added to the committee on accounts and claims.

On motion of Mr Pickett, ordered, that messrs Garth and Powell be added to the military committee.

Mr Perry called up the bill to be entitled an act more effectually to prevent the evil practice of dishing. *Ordered*, that the bill lie on the table till to-morrow.

The Senate resumed the consideration of the amendments made by the House of Representatives to the bill entitled an act to enable the State of Alabama to sell and dispose of certain lands therein named. *Ordered*, That the Senate concur in the amendments made by the House of Representatives to the second section of the bill. *Ordered*, That they concur in the first amendment made by the House of Representatives to the fourth section of the bill, by striking out "nine" and inserting "twelve," as the number of commissioners to be appointed to examine and class the lands. *Ordered*, That they disagree to the amendment made by the House to the 4th section of the bill, by adding after the word "commissioners" the words "none of whom shall be entitled to the pre-emptive privileges by virtue of the provisions of this act." *Ordered*, That the Senate concur in the remainder of the amendments made by the House to the 4th section of the bill. Mr Hubbard moved to amend the amendment made by the House to the 5th section of the bill, by striking out all of said amendment after the word "respectively," and inserting the following: "Will not directly or indirectly purchase any of said lands, except the pre-emption right given them; and that they (the commissioners) will not in any manner be concerned in fixing the value upon their own pre-emption;" (relating to the oath of the commissioners) which was carried. The amendment as amended was then agreed to. *Ordered*, That the Senate disagree to the amendment made by the House to the 7th section, by striking out the words "three newspapers published in said counties," and inserting the words "in all the newspapers of North Alabama, Tuscaloosa, the Selma Courier, Alabama Journal, Mobile Commercial Register, the Claiborne Wing and one of Nashville, Tennessee." *Ordered*, That they disagree to the amendment made by the House to the 1st line of the 9th section of the bill, by inserting the word "where" after "free," in said line. Mr Hubbard moved that the Senate concur in the amendment made by the House of Representatives to the 9th section of the bill, by striking out the word "quarter" and inserting in lieu thereof the word "half," so as to give persons actually residing upon, cultivating or occupying any of said lands a preference in the purchase of a *half* instead of a *quarter* section; which was carried. Yeas 14—Nays 7.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abernethie, Conner, Evans, Hubbard, McVay, Merriwether, Moore of Ma Perry, Pickett, Ross, Skinner, Smith and Watkins.

Those who voted in the negative are, messrs Crawford, Garth, Moore of Jackson Powell, Vining, Walthall and Wood.

*Ordered*, That the Senate disagree to the amendment made by the House to the 9th section of the bill, by adding the words "cultivated by occupant or holding under him, her or them." *Ordered* that they concur in the remainder of the amendments made by the House in the 9th section of the bill. *Ordered* that the Senate disagree to the amendment made by the House to the 10th section of the bill, by striking from the 1st line thereof, the words "classed and," and by adding to said section, the words "of equal or inferior value." *Ordered* that the Senate concur in the amendment, added by the House to the end of the 10th section of the bill. Mr Hubbard moved to amend the amendment, made by the House to the 7th line of the 12th section of the bill, so as to make the same read thus: "and all applicants shall file with the Register, his or her affidavit, to be preserved by the Register, setting forth that the land applied for, is for his or her own use, and not for the purpose of speculation or for the use of another;" which was carried. The amendment as amended, was agreed to. *Ordered* that the Senate concur in the amendment made by the House, by adding a proviso to the end of the 12th section of the bill. *Ordered* that the Senate concur in the several amendments made by the House to the 13th section of the bill. Mr Hubbard moved that the Senate disagree to the amendment made by the House, by adding the following section: Sec. 14. *And be it further enacted*, That the Register to be appointed by virtue of this act, shall be, and he is hereby required to reserve from sale, such part of said relinquished lands, as he may be required to do by the Canal Commissioners, who may be appointed to superintend the improvement of the Tennessee River: *provided*, that in all cases, where

Such reservation shall have the effect to deprive any person of a pre-emptive privilege, to any particular tract of land by virtue of any of the preceding provisions of this act, such person shall be entitled to enter at its assessed value, any other tract of land not appropriated to any other purpose or any other person, by force of this present or any other act of the General Assembly." Mr McVay moved to amend the amendment by adding thereto, the words "provided such reservation shall not interfere with any pre-emption right given by the preceding sections of this act;" which was lost. The question was put on Mr Hubbard's motion to disagree, and carried. Yeas 13—Nays 7.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Conner, Crawford, Evans, Hubbard, Merriwether, Moore of J. Powell, Ross, Skinner, Walthall and Wood.

Those who voted in the negative are, Messrs Garth, McVay, Moore of M. Perry, Pickett, Smith and Vining. So the amendment was disagreed to.

*Ordered*, That the Senate disagree to the amendment made by the House, to the 24th line of the 14th section of the bill, by striking out the word "payment," and inserting in lieu thereof the word "instalment." *Ordered*, That they concur in the several amendments made by the House to the 15th section of the bill. Mr Hubbard moved to amend the amendment made by the House to the 16th section of the bill, by striking out all after the word "lands," and inserting the following: "and the Register has receipted therefor it shall be the duty of the Register to forward a duplicate receipt of such final payment to the Governor of the state; whereupon the Governor shall issue a patent for the said lands, under the seal of the state, and forward the said patent to the Register, and such patent shall vest in the patentee or patentees a valid and fee simple title to the lands so patented, and it shall be the duty of the Register to require the patentee or patentees to surrender the receipt for final payment on the delivery of the patent for any land, and such receipt for final payment shall be filed by the Register in his office as a voucher;" which was carried. *Ordered*, That the Senate concur in said amendment as amended. Mr Hubbard moved to amend the amendment made by the House to the 17th section of the bill, by adding the words, "Provided, that if the person or persons in possession shall have planted a crop on said land, he, she or they shall be allowed a reasonable time to gather the same;" which was carried. *Ordered*, That the Senate concur in said amendment as amended. Mr Hubbard reported that the special committee to which the bill and amendments were referred had instructed him to recommend to the Senate to disagree to the amendment by the House to the 17th section of the bill, by striking out "three dollars," and inserting in lieu thereof "four dollars," as the per diem pay of the commissioners, and four dollars for every thirty miles travelling in going to and returning from the land office to their respective places of residence; and the question being put on disagreeing to said amendment, it was determined in the negative. Yeas 10—Nays 10.

The yeas and nays being desired, those who voted in the affirmative are, messrs Conner, Evans, Garth, McVay, Merriwether, Moore of m. Pickett, Powell, Vining and Wood.—Those who voted in the negative are, Mr President, Abercrombie, Crawford, Hubbard, Moore of J. Perry, Ross, Skinner, Smith and Walthall.

So the amendment was concurred in. *Ordered*, That the Senate concur in the several amendments made by the House of Representatives to the 18th, 19th and 21st sections of the bill. Mr Hubbard moved that the Senate disagree to the amendment made by the House, by adding a section to the bill, providing that no member of the present General Assembly shall be eligible to the appointment of Register, Receiver or Commissioner created by certain provisions of the bill; which was carried. Yeas 11—Nays 9. The yeas and nays being desired—

Those who voted in the affirmative are, Mr President, Abercrombie, Crawford, Evans, Hubbard, Merriwether, Ross, Skinner, Smith, Walthall and Wood.

Those who voted in the negative are, messrs Conner, Garth, McVay, Moore of J. Moore of m. Perry, Pickett, Powell and Vining. So the amendment was disagreed to. *Ordered*, That the Senate concur in the amendment made by the House to the bill by adding thereto the last section. *Ordered*, That the secretary acquaint the House of Representatives therewith.

Mr Pickett offered the following resolution: *Resolved*, That the committee on the donated lands be instructed to inquire into the expediency of memorializing the Congress of the United States to suspend from entry the vacant lands in the counties of Limestone, Lauderdale, Lawrence and Franklin, until the engineers of the United States shall determine where the contemplated canal shall be located, and to grant to the state of Alabama the exclusive privilege of entering all such lands within one mile of said contemplated canal; which was adopted.

*Ordered*, that messrs Hubbard, Walthall and Crawford be appointed a committee to superintend the arrangement of the several amendments made to the bill to enable the State of Alabama to sell and dispose of certain lands therein named.

A message from the Governor, by Mr Thornton: Mr President, the Governor did, on the 2d inst. approve and sign an act making a certain appropriation therein named; and an act for the relief of Henry S. Foote, both of which originated in the Senate. And then the Senate adjourned till to-morrow morning at 10 o'clock.

Friday, January 6, 1829.

The Senate met pursuant to adjournment.

Mr Perry, from the committee on the judiciary, to which was *referred* a resolution instructing them to inquire into the expediency of giving further time to those physicians who have failed to enroll their names in accordance with a former law, reported, that it is inexpedient to pass any law allowing the privilege asked for; which was concurred in.

Mr Garth, from the committee on divorce and alimony, to which was referred the record and proceedings of the circuit court of Jackson county, in the case of Robert C. Price against Elizabeth Price, reported a bill to be entitled an act to divorce Robert C. Price from Elizabeth Price; which was read and ordered to a second reading to-morrow.

Mr Hubbard, from the special committee appointed to superintend the arrangement of the several amendments made to the bill entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named, reported that, that duty had been correctly performed.

Mr Vinng introduced a bill to be entitled an act to authorize the Judge of the county court and commissioners of roads and revenue of Limestone county to appoint some suitable person to transcribe certain parts of the records of the county court aforesaid; which was read and ordered to a second reading to-morrow.

On motion of Mr Abercrombie, *Resolved*, that the judiciary committee be instructed to inquire into the expediency of establishing a separate orphans' court.

Mr Perry introduced a bill to be entitled an act prescribing the mode of obtaining the testimony of certain state officers; which was read and ordered to a 2d reading to-morrow.

The following communication was received from the Governor, on yesterday, by Mr Gayle.

EXECUTIVE DEPARTMENT. *Tuscaloosa, January 5, 1829.*

*The Honorable the President and Members of the Senate:*

Gentlemen—I have the pleasure to transmit you by their Secretary the annual report of the board of Trustees of the University of Alabama. I have the honor to be, most respectfully, your obedient servant.

JOHN MURPHY.

The report of the Trustees is as follows:

The board of trustees of the University of Alabama respectfully submit their annual report to the General Assembly. The financial situation of the institution will be seen from the following statement:

*Capital Stock.*—The proceeds of the sales of 19,635 28-100 acres of land, up to the 1st Dec. 1828, \$285,788 81. Of this amount there has been received in cash and invested in six per cent state stock the amount of \$9,116 38½. There are bonds outstanding and now due to the amount of 36,321 16½, bonds outstanding and which will fall due in 1829 to the amount of 7014 13; do. 1830 do. 327 39; do. 1831 do. 45085 57½; do. 1832 do. 1892 3½; do. 1833 do. 46476 2½; do. 1834 do. 1410 77; do. 1835 do. 14940 56; do. 1836 do. 15222 2½. There are remaining unsold 764 14 72-100 acres of land.

*Income Fund.*—There has been received from rents of houses, interest upon sales of lands, and dividends upon state stock since the funds of this institution were placed in the hands of the trustees to the 26th Nov. 1828, the sum of \$57446 48. From which

has been disbursed prior to 26th Nov. 1827 the sum of 8288 41. There has been disbursed from the date of the 1st annual report of the board to the 26th Nov. 1828 the sum of 6312 98½—as follows, to wit: For the current expenses of the board, clothing, Janes, &c. 1999 26; for the purchase of a tract of land adjoining the site selected for the university buildings, and recording the deed for the same 1251 37½; for the erection of university buildings, including the salary of the architect 3062 35. Total amount of disbursements 14601 39½—Leaving a balance of 22011 99½: Of this sum there has been invested in six per cent. state stock the sum of 16941 77½ the balance, cash in the treasury 599 31½. The amount due and unpaid for leases and rents and for interest upon deferred payments for lands sold is 22 617 80½: that is, on bonds for leases and rents, supposed to be 8000; on bonds for interest upon deferred payments, or fourth instalment 9426 58½; for interests upon deferred payments not bonded 541 22—making the total amount payable to the expenses of the ensuing year, in the event that collections are made in full of 45472 80. The annual amount of the income (and after the present year including dividends on state stock, interest on deferred payments and rents) may be estimated at about 17500; which will be subject to increase by the future sales of land.

The board of trustees is further of opinion, under existing laws the board has no power to order or direct the sale of any of the university lands lying in the vicinity of the town of Tuscaloosa for any purposes whatever. The experience of the past has however satisfied the board that a certain portion of the said lands lying in the vicinity of Tuscaloosa and reserved by law from sale, are not only subject from their proximity to said town to be trespassed and intruded upon by the inhabitants thereof but that frequent trespasses and depredations have actually been committed upon them, which the utmost vigilance has not sufficed to detect or expose, but which have tended greatly to reduce the value of the said lands. The board therefore, operated upon by the conviction that the immediate sale of the said lands will greatly conduce in a pecuniary point of view to advance the interest of the university, respectfully recommend to the consideration of the General Assembly the expediency of providing by law for the sale of the said lands which are described as follows, to wit: The southwest quarter section, and the west half of the southeast quarter section of section 23, township 21, range 10, lying in the vicinity of Tuscaloosa.

The board of trustees further state to your honorable body, that in pursuance of an act of the General Assembly passed at their last session, authorizing and directing them to select a site within fifteen miles of the town of Tuscaloosa, they were for that purpose convened by the president of their board on the 17th day of March last, and after viewing a number of sites which were offered to them, situate in the adjacent country within fifteen miles of the town of Tuscaloosa they selected the one called 'Marr's field' on the university land.

They further state that, in pursuance of a resolution of their board, which was passed at that time, they adopted a plan for the university buildings which was submitted to them by the state architect, with some modifications; that they then proceeded to appoint a committee to contract for various buildings, as marked on said plan, all of which will more fully appear by a reference to said resolution a copy of which is hereto annexed, marked A; that the building committee afterwards met twice at the town of Tuscaloosa and made contracts for all the buildings which were required by said resolution to be contracted for—the estimate cost of each of them, the number contracted for, and the names of the contractors, will more fully appear by a reference to the report of the building committee, together with the report of the architect hereto annexed, marked B. They further state that, in pursuance of another resolution of their board passed at the same time, they purchased of a certain James Paul a tract of land containing fifty acres, for the sum of twelve hundred and fifty dollars. The reasons which induced them to make this purchase were, the immediate contiguity of the land to the site selected, thereby to prevent immoral persons from settling on the same, the superior quality of the clay for making bricks for the buildings, and the quantity of wood thereon which could be spared therefrom for burning them. The truth of the last reason stated will be fully supported by reference to the brick contracts, from which it will appear that there has been a saving thereon more than equal to the price paid for the said land.

The board of trustees beg leave further to state that, in pursuance of an act of Congress passed the 24th May last, entitled an act to authorize the selection of lands for the benefit of a seminary of learning in the state of Alabama instead of other lands heretofore selected—which lands were sold by the government of the United States—they have selected the following lands, to wit: The NW. qr. of sec. 28, town 4, range 10 west—the SE. qr. of sec. 21, town 4, range 10 west—the SW. qr. of sec. 21, town 4, range 10, west—the SE. qr. of sec. 24, town 4, range 10, west—the SW. qr. of sec. 15, town 4, range 9 west—the SE. qr. of sec. 8, town 4, range 9 west—the east part of the NW. qr. of sec. 21, town 4, range 10, west—in all containing 1062 88-100 acres. All of which are respectfully submitted. By order of the board,

**JOHN MURPHY**, president ex officio of the board of trustees.

(A.) Report and resolutions submitted by the committee appointed to confer with the architect in relation to a plan for the University buildings:—The committee appointed to confer with the architect in relation to a plan for the university buildings, beg leave to report: That they have performed that duty and herewith submit a plan prepared by the architect including four blocks of houses for the faculty, marked on the plan *A B C D*; six blocks of dormitories, marked *E F G H I K*; a principal building for public lectures, commencements, library, &c., marked *L*; a building for the chemical laboratory and lectures, marked *M*, and two hotels, marked *N O*—which plan they recommend to the adoption of the board. They also submit herewith an estimate of the cost of two blocks of dormitories marked *E H*—of two blocks of professors' houses marked *B C*—of the laboratory marked *M*—and of one hotel marked *N*, and the edifice marked *L*, amounting to fifty-six thousand dollars; ten thousand dollars of which will be required within the present year; twenty to thirty thousand dollars within the second year, and the remainder in the third year. The whole of the building however, included in this estimate, it is believed can be completed by the end of the second year. The committee also recommend the adoption of the following resolutions. Resolved that it is expedient to commence the university buildings with as little delay as is compatible with due economy, and that the buildings, an estimate of the cost of which has been submitted should be first erected. Be it further resolved, that a committee of four, together with the president of the board, shall be appointed who, or any two of whom, with the aid of the architect, shall have power to make contracts for the erection of said buildings. And be it further resolved, that the sum of fifteen thousand dollars be and the same is hereby appropriated to be applied by the building committee to the erection of the aforesaid buildings.

(B.) The committee who were by a resolution of the board of trustees appointed to make contracts for erecting certain buildings on the site selected by the last board, for the university of Alabama, respectfully beg leave to report: That after having previously advertised the same to be let to the lowest bidder, they met at the house of Sam'l Ewing on the 16th day of June last, and that after receiving a number of proposals from various persons, previous to the opening them, they adopted in substance the following resolution: to divide the contracts into as many parts or portions as would best reserve a speedy erection of the buildings. In pursuance whereof they divided the masonry and cut stone into two parts; the necessary brick work into two parts, and the carpentry into five parts. That Harden Perkins and Michael Swinney and John Robb being the lowest responsible bidders, all the cut stone and masonry requisite to be done on the two faculty buildings, together with the recitation room and hotel, were allotted to Harden Perkins, Esq. for the following prices, to wit: The masonry at \$2 25 per perch, and the wrought and faced stone at the price of sixty seven cents per foot; and the work necessary to be done on the two dormitories, was allotted to Swinney and Robb to be executed for the same prices; that the brick work necessary to be done on the two dormitories, was allotted to Drish and White at the price of \$7 37 1-2 per thousand including stock bricks; and the brick work necessary to be executed upon the buildings which were allotted to Harden Perkins, was allotted to Wm. Morton for the price of \$7 90 per thousand—they being the lowest bidders therefor. That the five carpentry contracts were allotted as follows: one dormitory to Robert Goodman; one ditto to Edwin Sharp; one house to Daniel Grayson, and the hotel to James Mallory—they appearing to be the lowest bidders for each of them. All of which several carpentry contracts were agreed to be done for specific prices each, which will more fully appear by a reference to the specifications appended to their bonds herewith returned and enclosed in an envelope marked A. The committee then adjourned to meet again at some future time when the architect should have completed his specifications for the other buildings directed to be let out. Accordingly, upon notice from him that they were ready, they met again on the 27th of October last, having previously advertised the same, and entered into contracts with the following persons, they being the lowest responsible bidders: with John Robb and R. P. Baker, each to execute a moiety of the cut stone and masonry necessary to be done upon the two buildings, let out for the following prices: the wrought and cut stone at the price of 75 cents per superficial foot, and the masonry at \$2 50 per perch; with Thomas Love and Byrd F. Robinson, for all the brick work including cut stone, and with Daniel Grayson for the other buildings, each to be paid by measurement for their work, for certain prices stated in the specifications appended to their bonds we contracted with William F. Frester for all the scantling to be delivered at the site, for the university buildings, at the price of one dollar per hundred feet; and with Wm. Moore, for all the plank to be delivered at the same place the rough edge plank for the sum of eighty cents per hundred, and for all other plank, for the sum of one dollar and

twenty cents per hundred as will more fully appear by the specifications appended to their plans herewith returned. Your committee regret that the buildings first let out are not at this time in that state of forwardness which they so fully anticipated. The cause of their being delayed will be stated by the report of the architect to which they refer. It is an act of justice due to him here to state that his efforts have been unremitting to meet the wishes of the board; and that he has to this time discharged all his duties with industry, fidelity and integrity. It will appear from the statement from the comptroller's books herewith annexed, that there has been expended from the funds placed at the disposal of the building committee the sum of two thousand nine hundred and eighty-six dollars and eight-fifty cents of the university. All of which is respectfully submitted.

HUME R. FIELD Chairman of the building committee.

Buildings already contracted for at the University of Alabama: No 1, blocks of lesser dormitories \$20,516; No 2 do. for professors and a recitation room 12,000; laboratory and appendages 10,000; hotel 5,000. In hand towards the rotunda 8,484. Amount of first appropriation 56,000.

WM. NICHOLS, State Architect.

December 31, 1828.

*Ordered*, that the report of the Trustees of the university be referred to the committee on schools and colleges, and school and college lands, and that one hundred copies thereof be printed for the use of the Senate.

The following communication was received from the Governor, by Mr Thornton, on yesterday:

EXECUTIVE DEPARTMENT, Tuscaloosa, January 5, 1829.

The Hon. the President and Members of the Senate:

Gentlemen—I have the honor to communicate to you a letter this moment received from Eli Shortridge, Esq. in regard to the office of Judge of the third judicial circuit, which he lately held under an executive appointment made during the recess of the General Assembly. The appointment would have continued to the end of the present session of your honorable body had not the resignation been received. I beg leave to suggest that the public service, connected with the present session of the supreme court, will require your immediate attention to this subject. I have the honor to be, most respectfully, your ob't serv't.

JOHN MURPHY.

*Ordered*, that the communication, together with the accompanying document, be referred to the committee on the judiciary.

Mr President laid before the Senate the following communication from the Secretary of State:

Secretary of State's Office, January 5, 1829.

The Hon. the President and Members of the Senate:

In obedience to the act of the General Assembly at the last session, entitled an act to authorize and require the secretary of state to procure and distribute to each county in this state one set of weights and measures. I have the honor to state that the General Assembly did not make any appropriation to carry the law into effect; but notwithstanding at sundry times I made inquiries of those from whom I thought it probable to derive the best information relative to the subject and satisfied myself that I could not make a contract either here or in New-York upon a credit, without a great disadvantage to the state. Through the kindness of A. P. Baldwin, Esq. of this place, whom I requested to procure an estimate of the cost of the standard from the manufactories of New-York, a copy of whose communication I herewith enclose. I am enabled to state to your honorable body that the lowest estimate furnished him was \$3000, to be delivered there. I make this report that your honorable body may be better able to adopt such measures in the premises best calculated to effect the object of the law. I have the honor to be, with great respect, your ob't serv't.

JAMES I. THORNTON.

*Ordered*, that the communication and accompanying document lie on the table.

A message from the House of Representatives, by Mr. Tunstall: Mr. President, the House of Representatives have passed bills which originated in the Senate, entitled an act to authorize Zachariah Holly to emancipate certain slaves therein named; and an act authorizing the liberation of certain slaves, and have amended the same as herewith shewn; in which they desire your concurrence. They have passed bills which originated in their House, entitled an act to regulate the proceedings in the courts of law in this state; an act to amend an act, to provide for keeping in repair a certain road therein mentioned; and an act to authorize guardians to



bring the slaves of their wards into this state without restriction ; in which they desire your concurrence.

*Ordered*, that the Senate concur in the amendments made by the House to the bills entitled an act to authorize Zachariah Holly to emancipate certain slaves therein named ; and an act authorizing the liberation of certain slaves. *Ordered*, that the secretary acquaint the House therewith.

Bill from the House of Representatives entitled an act to regulate the proceedings in the courts of law in this state ; an act to amend an act to provide for keeping in repair a certain road therein mentioned ; and an act to authorize guardians to bring the slaves of their wards into this state without restriction ; were severally read, and ordered to a 2d reading to-morrow.

A bill from the House of Representatives, entitled an act prohibiting certain persons from exercising the powers of justices of the peace and constables of this state ; was read and ordered to a second reading to-morrow.

A message from the House of Representatives, by Mr Tunstall : *Mr President*, The House of Representatives have adopted the following resolution, in which they desire your concurrence : *Resolved*, that with the concurrence of the Senate, the President and Directors of the bank of the State of Alabama, without delay, report to the joint committee of the two Houses, appointed to examine the affairs of the bank of the state of Alabama, who shall in like manner report to both Houses, what amount is due the bank from the citizens of each county in this state, on general accommodation, what amount on special accommodation, also what amount has been discounted for each county since the last apportionment, and the aggregate amount offered for by citizens of each county of this state. *Ordered*, that the Senate concur in the above resolution from the House of Representatives, and that the Secretary acquaint the House therewith.

Mr Smith offered the following resolution : *Resolved* that the President of this House be instructed to inform Judges White, Creshaw and Saffell, that the Senate will be ready by 11 o'clock, to-morrow to receive and hear any answers they may have to make to the charges exhibited against them by William Kelly, Esq. On motion of Mr Powell, ordered that the resolution lie on the table.

Mr Perry from the committee on the judiciary, to whom was referred the communication from the governor in relation to the resignation of Eli Shortridge, Esq. judge of the 3d judicial circuit and whose commission would have expired at the end of the present session of the General Assembly, reported, that in their opinion the governor cannot make an appointment to fill a vacancy which has occurred during the session, and that the judge appointed at the present session cannot legally enter upon the discharge of his duties until the end of the present session of the General Assembly, and that under the constitution the Legislature have not the power to fill the vacancy occasioned by the resignation of Judge Shortridge, to take effect before the end of the present session of the General Assembly ; which was concurred in.

Mr Ross offered the following resolution : *Resolved*, that the committee on schools and colleges, &c. be instructed to inquire into the expediency of setting apart a portion of the university fund for the education of the poor and indigent children of this state ; which was adopted. Yeas 17—Nays 2.

The yeas and nays being desired, those who voted in the affirmative are, Mr. President, Abercrombie, Crawford, Garth, Hubbard McVay, Merriwether, Moore of Mr. Perry, Pickett, Powell, Ross, Skinner, Smith, Vining, Walthall and Wood. Those who voted in the negative are, messrs. Evans and Moore of J.

Engrossed joint resolutions proposing amendments to the constitution of the state of Alabama so as to have biennial sessions of the General Assembly, were read the third time and committed to a special committee consisting of messrs Walthall, Hubbard and McVay, to consider and report thereon.

Joint resolutions proposing amendments to the constitution of the state of Alabama, so as to limit the tenure of the judges to six years, were read the second time and laid on the table.

Joint memorial to the Congress of the United States, asking an extension of the federal judiciary system to the western states, was read the second time and laid on the table.

A bill to be entitled an act to emancipate certain slaves therein named, was read the second time and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act the more effectually to prevent the evil practice of duelling, was read the second time and referred to a special committee, consisting of messrs Hubbard, Perry and Abernethie, to consider and report thereon.

Mr Moore of J. introduced a bill to be entitled an act to authorize the sheriff to adjourn the supreme court from day to day, which was read; and the rule requiring bills to be read on three several days being dispensed with, the bill was read the second time and referred to the committee on the judiciary.

Mr Pickett offered the following resolution: *Resolved*, That the committee on schools and colleges and school and college lands be instructed to inquire into the expediency of memorializing the Congress of the United States, asking their consent that the whole of the university fund of this state, granted by the Congress of the United States, may be set apart for the education of the poor and indigent children of this state; or be disposed of for the purposes of education in such manner as the legislature of Alabama may direct; which was adopted.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Wednesday, January 7, 1829.*

The Senate met pursuant to adjournment.

Mr Ross presented the account of Josiah Q Guild against the state; which was referred to the committee on accounts and claims.

Mr Moore of J from the joint committee on enrolled bills, reported as correctly enrolled, an act to alter the time of holding the county court of Marengo county, and Monroe county court; an act to divorce Matilda S. Chonu from Lancelott Chonu; an act to appoint commissioners to take charge of the public property in the county of Dallas; an act to authorize the building of a jail in Morgan county; an act to repeal in part a resolution entitled a resolution relative to the militia laws of this state, approved Jan 13, 1827; an act to amend an act passed at the last session of the General Assembly authorizing a lottery in Henry county and for other purposes; and an act to incorporate Valley Creek Academy in the county of Dallas—all of which were signed by Mr President.

Mr Walthall, from the special committee to which was referred joint resolutions proposing amendments to the constitution of the state of Alabama so as to have biennial sessions of the General Assembly, reported the same as amended; which was carried. *Ordered*, that the resolutions lie on the table for the present.

The President laid before the Senate the following communication from Judges Saffold, Crenshaw, and White:

*To the Hon. the President and Members of the Senate of the State of Alabama.*

The undersigned Judges of the State of Alabama, implicated in the charges laid before your Honorable body, by William Kelly, respectfully represent, that they did not receive a copy of the charges until yesterday; that they will be prepared to have their answers read by their counsel, Messrs Hopkins and Ormand, at the Bar of the Senate on Friday next, if it is the pleasure of the Senate, then to receive and hear them; and that if the time proposed will be unsuitable or inconvenient, they request that your Honorable body would indicate what time would be more suitable.

(Signed)

*R. Saffold, A. Crenshaw, John White.*

January 6th, 1829.

*Ordered*, That the communication lie on the table.

On motion of Mr. Smith, *Resolved*, That the President of the Senate, be directed to acknowledge the receipt of the communication from Judges Saffold, Crenshaw and White, in relation to certain charges preferred against them by William Kelly, Esq. and acquaint them in reply that the Senate will be prepared at the time and place indicated in that communication, to receive and hear their answers to the charges through their counsel, Messrs Hopkins and Ormand.

Mr Powell introduced a bill to be entitled an act to change the times of holding the county courts for Tuscaloosa county; which was read and ordered to a second reading to-morrow.

A message from the House of Representatives, by Mr Tunstall: Mr President, The House of Representatives concur in the amendment made by the Senate, to

their amendment to the bill entitled an act to increase the salary of the State Printer. They have passed a bill which originated in the House, entitled an act to appoint a commissioner for the county of Pike; in which they desire your concurrence.

A bill from the House of Representatives, entitled an act to appoint a commissioner for the county of Pike, was read and ordered to a second reading to-morrow.

Mr Crawford offered the following resolution: *Resolved*, That with the concurrence of the House of Representatives, the Senate will assemble in the Hall of the House of Representatives on this evening at 6 o'clock, for the purpose of electing a State Printer for the present year. Mr Ross moved to amend the resolution, by adding the words "and a Warden for the Port of Mobile, to fill the vacancy occasioned by the resignation of Philip McLoskey, Esq." which was carried. The resolution as amended was then adopted. Ordered that the Secretary acquaint the House of Representatives therewith.

An engrossed bill to be entitled an act to emancipate certain slaves therein named, was read the third time and passed. Ordered that the title of the bill be as aforesaid; and that it be sent to the House of Representatives for their concurrence.

A bill to be entitled an act to divorce Robert C. Price from Elizabeth Price, was read the second time and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act to authorize the Judge of the county court and commissioners of Revenue and Roads of the county of Limestone, to appoint some suitable person to transcribe certain parts of the records of the county court aforesaid, was read the second time and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act prescribing the mode of obtaining the testimony of certain State officers, was read the second time and referred to the committee on the judiciary, to consider and report thereon.

A bill to be entitled an act prohibiting certain persons from exercising the powers of justices of the peace and constables in this State, was read the second time, amended on Mr Powell's motion, and ordered to a third reading to-morrow.

A bill to be entitled an act to amend an act entitled an act to provide for keeping in repair a certain road therein named; was read the second time and ordered to a third reading to-morrow.

And then the Senate adjourned till 3 o'clock this evening.

*Evening Session*—Mr Skinner introduced a bill to be entitled an act to amend an act entitled an act to incorporate La Fayette Academy in Franklin county; which was read and ordered to a second reading to-morrow.

Mr Skinner also introduced a bill to be entitled an act to authorize the county court of Franklin county to levy a special tax for certain purposes therein named; which was read and ordered to a second reading to-morrow.

Mr Watkins introduced a bill to be entitled an act to explain and amend an act entitled an act to regulate the licensing of Physicians to practice, and for other purposes; which was read and ordered to a second reading to-morrow.

Mr Perry called up the Joint Resolutions proposing amendments to the constitution of this State, so as to limit the tenure of the Judges to six years. The resolutions were amended on Mr Perry's motion and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act to regulate the proceedings in the courts of law in this State, was read the second time and referred to the committee on the judiciary.

A bill to be entitled an act to authorize Guardians to bring the slaves of their Wards into this State without restriction, was read the second time and ordered to a third reading to-morrow.

Mr Hubbard from the special committee to which was referred a bill to be entitled an act more effectually to prevent the evil practice of duelling, reported the same as amended.

Mr Crawford moved an amendment to the amendment, proposed by the committee; which was adopted, and the amendment proposed by the committee as amended, was concurred in.

Mr Powell offered the following amendment to the bill: *And be it further enacted*, That the oath against duelling heretofore imposed, shall be and the same is hereby required to be taken in the same manner as heretofore provided by law, which was rejected. Yeas 9—nays 11.

The yeas and nays being desired, those who voted in the affirmative are, Messrs Crawford, Garth, McVay, Merriwether, Moore of M. Powell, Skinner, Smith and Vining.

Those who voted in the negative are, Mr President, Abercrombie, Conner, Evans, Hubbard, Moore of J. Perry, Pickett, Walthall, Watkins and Wood.

Mr Smith moved that the further consideration of the bill be indefinitely postponed; which was lost. Yeas 3—nays 17.

The yeas and nays being desired, those who voted in the affirmative are, Messrs Merriwether, Powell and Smith.

Those who voted in the negative are, Mr President, Abercrombie, Conner, Crawford, Evans, Garth, Hubbard, McVay, Moore of J. Moore of m. Perry, Pickett, Skinner, Vining, Walthall, Watkins and Wood. *Ordered*, That the bill be engrossed and made the order of the day for a third reading to-morrow.

Engrossed joint resolutions proposing amendments to the constitution of the state of Alabama, so as to have biennial sessions of the General Assembly, were taken up. Mr Walthall offered an amendment to the resolutions, by way of rider; which was read three several times and adopted. The question was then put, Shall the resolutions pass? and determined in the affirmative. Yeas 15—Nays 5.

The yeas and nays being desired, those who voted in the affirmative are Mr President, Abercrombie, Conner, Garth, Hubbard, McVay, Moore of J. Moore of m. Perry, Pickett, Skinner, Vining, Walthall, Watkins and Wood.

Those who voted in the negative are, messrs Crawford, Evans, Merriwether, Powell and Smith. So the resolutions were passed. *Ordered*, that the title be as aforesaid, and that they be sent to the House of Representatives for their concurrence.

And then the Senate adjourned till to-morrow morning at 10 o'clock,

*Thursday, January 8, 1829.*

The Senate met pursuant to adjournment.

The President informed the Senate that he had, pursuant to a resolution of yesterday, addressed and caused to be delivered to Judges Saffold, White and Crenshaw, a communication of which the following is a copy:

*Tuscaloosa, January 7, 1829.*

To the Hon. R. Saffold, A. Crenshaw and John White, Judges of the State of Alabama—Gentlemen: By a resolution this day adopted by the Senate of this state, over which I have the honor to preside, I am directed to acknowledge the receipt of your communication in relation to certain charges preferred against you by William Kelly, Esq. and to acquaint you in reply that the Senate will be prepared at the time and place indicated in that communication to receive and hear your answers to those charges through your counsel, messrs Hopkins and Ormond. I have the honor to be, with great respect, &c. (Signed) NICHOLAS DAVIS.

Mr Ross presented the petition of sundry citizens of Mobile, praying the passage of a law authorizing the emancipation of Pierre Chastang, formerly the property of Registe Bemady; which was referred to a special committee consisting of messrs Ross, Watkins and McVay, to consider and report thereon.

Mr Ross presented the account of Charles Steele against the state; which was referred to the committee on accounts and claims.

Mr Moore of J. from the joint committee on enrolled bills, reported as correctly enrolled, an act to increase the salary of the state printer; which was accordingly signed by Mr President.

Mr Perry, from the committee on the judiciary, to which was referred a bill to be entitled an act to change the mode of compensating jurors, reported the same without amendment. *Ordered*, that the bill be recommitted to a special committee; whereupon messrs Perry, Crawford and Pickett were appointed.

Mr Perry, from the same committee, to which was referred a bill to be entitled an act to authorize the sheriff to adjourn the supreme court from day to day, reported the same without amendment. *Ordered*, that the bill lie on the table.

Mr Wood introduced a bill to be entitled an act to suppress vice and immorality; which was read; and the rule requiring bills to be read on three several days being

dispensed with, the bill was read the second time and referred to the committee on the judiciary.

A message from the House of Representatives, by Mr Tunstall: Mr President, The House of Representatives insist on their amendment to the first section of the bill entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named. They insist on their amendment to the 4th section of the bill. They also insist on their amendment to the 5th section of the bill, by striking out the words "that the lands of the first class shall by said commissioners be valued at from six dollars to ten dollars per acre, according to the locality or other causes of value; lands of the second class, from four dollars to six dollars per acre; and lands of the third class shall be valued from the minimum price of said lands to three dollars per acre, according to the value; and if the said commissioners shall be of opinion that any of said lands being of the first class, and contiguous to the canal or a town, or from other local causes shall be worth more than ten dollars per acre, they shall assess what they esteem its true value, and the price which they fix upon them shall be the price at which they are to sell,"—and by inserting in lieu thereof the words "that the said lands shall be divided according to value into four classes; the first class of which shall be valued at not less than eight dollars per acre; lands of the second class at not less than five dollars; lands of third class at not less than three dollars; and lands of the fourth class at not less than the minimum price per acre;—but the said commissioners shall assess the true value of each particular half quarter section, or other legal subdivision of said lands, which shall be the price at which they shall respectively sell." They disagree to the amendment made by the Senate to the amendment made by the House to the end of the 5th section of the bill. They insist on their amendment to the seventh section of the bill. They also insist on their amendment to the 9th section of the bill, by inserting the word "white" after the word "free." The House recede from the other amendments to the 9th section of the bill. They insist on their amendments to the 10th section, by striking from the 7th line thereof the words "classed and." They also insist on their amendment to the 10th section, by adding the words "of equal or inferior value." They disagree to the amendment made by the Senate to their amendment to the 12th section of the bill, which reads thus: "and all applicants shall file with the register his or her affidavit, to be preserved by the register, setting forth that the land applied for is for his or her own use, and not for the purposes of speculation or for the use of another." They insist on their amendment to the bill by adding thereto section No 14, marked U. They recede from their amendment to the 14th section of the bill by striking out the word "payment" and inserting in lieu thereof the word "instalment." They concur in the amendment made by the Senate to their amendment to the 16th section of the bill. They also concur in the amendment made by the Senate to their amendment to the 17th section of the bill by adding thereto a proviso. They recede from their amendment to the bill by adding an additional section, providing that no member of the present General Assembly shall be eligible to the appointment of register, receiver or commissioner, created by certain provisions of the bill.

Mr Ross moved that the Senate recede from their disagreement to the amendment made by the House to the first section of the bill entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named, by striking out "Columbiana," the place designated for the location of the land office and inserting the words "at such place as shall be designated by joint vote of the two Houses;" which was carried. Yeas 11—Nays 10.

The yeas and nays being desired, those who voted in the affirmative are, Mr. President, Abercrombie, Evans, McVay, Moore of J. Powell, Ross, Smith, Viuing, Walthall and Wood.

Those who voted in the negative are, messrs Conner, Crawford, Garth, Hubbard, Morrowther, Moore of Mr. Perry, Pickett, Skinner and Watkins. On motion of Mr Hubbard, ordered, that the Senate insist on their disagreement to the amendment made by the House to the 4th section of the bill. Mr Hubbard moved that the Senate insist on their disagreement to the amendment made by the House to the 5th section of the bill by striking therefrom the words "that the lands of the first class

shall by said commissioners be valued at from six dollars to ten dollars per acre according to the locality or other cause of value; lands of the second class from four dollars to six dollars per acre; and lands of the third class shall be valued from the minimum price of said lands to three dollars per acre according to the value, and if the said commissioners shall be of opinion that any of the said lands being of the 1st class, and contiguous to the canal or a town, or from other local causes shall be worth more than ten dollars per acre, they shall assess what they esteem its true value, and the price they fix upon them shall be the price at which they are to sell," and inserting the words "that the said lands shall be divided according to value into four classes; the first class of which shall be valued at not less than eight dollars per acre; land of the second class at not less than five dollars; lands of the third class at not less than three dollars per acre; and lands of the fourth class at not less than the minimum price per acre; but the said commissioners shall assess the true value of each particular half quarter section or other legal subdivision of said land, which shall be the price at which they shall respectively sell;" which motion was carried. Yeas 13—Nays 8.

*The yeas and nays being desired, those who voted in the affirmative are Mr. Prichard, Abernethy, Turner, Crawford, Evans, Hubbard, Merriweather, Moore, of M. Pickett, Powell, Ross, Skinner and Walthall.*

*Those who voted in the negative are, messrs Garth, McVay, Moore of J. Perry, Smith, Vining, Watkins and Wood.*

So the Senate insist on their disagreement to said amendment. *Ordered*, that the Senate insist on their amendment to the amendment made by the House to the end of the 5th section of the bill. *Ordered*, that the Senate recede from their disagreement to the amendment made by the House to the 7th section of the bill.

On motion of Mr Hubbard: *Ordered*, that the Senate insist on their disagreement to the amendment made by the House to the 9th section of the bill by inserting the word "white" after the word "free." *Ordered*, that the Senate insist on their disagreement to the amendment made by the House to the 10th section of the bill by striking from the 7th line thereof the words "classed and." *Ordered*, that the Senate insist on their disagreement to the amendment made by the House to the 10th section of the bill by adding the words "of equal or inferior value." *Ordered*, that the Senate insist on their amendment made by the House to the 12th section of the bill. *Ordered*, that the Senate insist on their disagreement to the amendment made by the House by adding the 14th section to the bill. *Ordered*, that the Secretary acquaint the House of Representatives therewith.

The following communication was received from the Governor, by Mr Thornton:

EXECUTIVE DEPARTMENT, *Tuscaloosa, January 6, 1829.*

The Hon. the President and Members of the Senate:

Gentlemen—The Board of Trustees of the University of Alabama have received and considered a proposition made to them by Mr John Talbert, of Monroe county, to purchase by special contract, fractions 34 and 27 west, in township 7, range 5, in the land district of Cahawba, containing 980 50-100 acres. The board has had information deemed satisfactory, that to close with the proposition would promote the interests of the university. It will be seen by the documents which accompany this communication, that the fractions are very inferior, with the exception of 75 or 80 acres, including all the lands on them which is at all fit for cultivation, being remarkably hilly, and the soil exceedingly poor. The petitioner proposes to purchase the whole of the two fractions, excepting four quarters lying west, two in each fraction, which purchase will amount to 340 acres, for the sum of \$2000, payable in equal annual instalments for four years. The situation of the fractions will be more clearly seen by reference to the plat of the land which accompanies the petition herewith transmitted. I am instructed by the board of trustees to request your honorable body to pass an act authorizing them to make this special contract. It is considered an opportunity to make an advantageous sale of some of our most inferior land, which could scarcely ever be properly included under any general arrangement of the price of the university land. If some of the most inferior lands were sold to advantage in this way, any general arrangement would more fully embrace the merits of the balance of our lands, and apply with more desirable approximation

to uniformity in price, according to the real value of the separate tracts. All which is most respectfully submitted, by order of the board.

JOHN MURPHY, *President, ex officio of the board of trustees.*

*Ordered*, that the communication, together with the accompanying document, be referred to the committee on schools and colleges and school and college lands to consider and report thereon.

Mr. Smith offered the following resolution: *Resolved*, that the President of the Senate inform William Kelly, Esq. that he will be permitted to take a seat within the bar of this House, and to be heard in person or by counsel whilst the answers of Judges Saffold, Crenshaw and White, are received by the Senate, and at all other times during the pendency of the examination of the charges exhibited against them.

*Ordered*, that the resolution lie on the table.

And then the Senate adjourned till 3 o'clock this evening.

*Evening Session* — Mr. Perry called up the bill to be entitled an act for the relief of David M. Smithson. *Ordered* that it be recommitted to the special committee to which the petition of David M. Smithson was referred.

A bill to be entitled an act to appoint a commissioner for the county of Pike, was read the second time and ordered to a third reading to-morrow.

A bill to be entitled an act to change the times of holding the county court for the county of Tuscaloosa, was read the second time, amended on Mr. Powell's motion, and ordered to be engrossed for a third reading to-morrow.

Engrossed bills of the following titles, to wit: an act to authorize the Judge of the county court and commissioners of revenue and roads of Limestone county to appoint some suitable person to transcribe certain parts of the records of the county court aforesaid; an act to divorce Robert C. Price from Elizabeth Price; and an act to prevent the evil practice of duelling, were severally read the third time and passed.

*Ordered*, That the titles of the bills be as aforesaid, and that they be sent to the House of Representatives for their concurrence.

Engrossed Joint Resolutions, proposing amendments to the constitution of the State of Alabama, so as to limit the tenure of the Judges to six years, were read the third time and passed. Yeas 18—nays 3.

The yeas and nays being desired, those who voted in the affirmative are, Messrs Abercrombie, Conner, Crawford, Evans, Gauth, Hubbard, McVay, Merriweather, Moore of J. Moore of M. Perry, Pickett, Ross, Skinner, Smith, Walcott, Watkins and Wood.

Those who voted in the negative are, Mr. President, Powell and Voting. So the resolutions were passed. *Ordered*, That the title be as aforesaid, and that they be sent to the House of Representatives for their concurrence.

Bills from the House of Representatives, entitled an act to amend an act entitled an act to provide for keeping in repair a certain road therein named, and an act to authorize Guardians to bring the slaves of their Wards into this State without restriction, were severally read the third time and passed. *Ordered*, That the Secretary acquaint the House of Representatives therewith.

A bill to be entitled an act to amend an act entitled an act to incorporate the La Fayette Academy in the village of La Grange; and an act to authorize the county court of Franklin county, to levy a special tax for certain purposes therein contained, were severally read the second time and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act to explain and amend an act entitled an act to regulate the licensing of Physicians to practice, and for other purposes, was read the second time and referred to a special committee consisting of Messrs Smith, Watkins and Perry, to consider and report thereon.

A bill to be entitled an act prohibiting certain persons from exercising the powers of justices of the peace and constables in this State was read the third time, amended on Mr. Ross's motion by way of rider, and passed. *Ordered*, That the Secretary acquaint the House of Representatives therewith.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Friday, January 9th, 1829.*

The Senate met pursuant to adjournment.

This being the day appointed to receive and hear the answers of the Judges Saff

fold, Crenshaw and White, to the charges exhibited against them before the Senate by William Kelly, Esq. and Messrs Hopkins and Ormond, their counsel, having appeared, were invited by Mr President to take their seats within the Bar of the Senate.

Mr Ormond then read to the Senate the separate answers of John White, Reuben Saffold and Anderson Crenshaw, three of the Judges of the State of Alabama, in relation of the charges preferred against them by William Kelly, Esq. On motion of Mr Hubbard, *Ordered*, That the answers of Judges White, Saffold and Crenshaw, lie on the table, and that twenty-six copies thereof be printed for the use of the Senate. On motion of Mr Abernethie, *Ordered*, That the Secretary of the Senate furnish William Kelly, Esq. with a copy of the answers of Judges White, Saffold and Crenshaw, to the charges preferred against them by him.

And then the Senate adjourned till 3 o'clock this evening.

*Three o'clock, P. M.*—Mr Garth offered the following resolution: *Resolved*, That the judiciary committee be instructed to arrange specifications from the charges exhibited against Judges Saffold, Crenshaw and White, by William Kelly, Esq. and report the same to the Senate. *Ordered* that the resolution lie on the table.

Mr Hubbard introduced a bill to be entitled an act to compel the President and Trustees of the town of Moulton to keep their streets in repair; which was read and ordered to a second reading to-morrow.

An engrossed bill to be entitled an act to change the times of holding the county court of Tuscaloosa county, was read the third time and passed. *Ordered*, That the title of the bill be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

A message from the House of Representatives by Mr Tunstall: Mr President, The House of Representatives have adopted the following resolution, in which they ask the concurrence of the Senate: *Resolved*, That with the consent of the Senate the joint committee on the State Bank be instructed to report to both Houses of the General Assembly, all the correspondence that may have taken place between the Banks in Mobile and the State Bank, or its agents, in relation to any arrangements or propositions to receive the notes of each other in payment or on deposit; and all correspondence or instructions which may have led to a discontinuance of any such arrangement. They have passed a bill which originated in the Senate, entitled an act for the relief of Joseph Bates, jr. tax collector of Mobile county; and have amended the same as herewith shewn. In which they desire your concurrence. They have postponed until the first day of March next, the joint memorial to the Congress of the United States, asking them to repeal all laws of Congress, which give to the Government of the United States a priority of payment over private creditors in cases of insolvency, and in the distribution of the estates of deceased debtors; which originated in the Senate. They have passed bills which originated in the House of Representatives, of the following titles, to wit: an act to discontinue and establish certain election precincts therein specified; an act to reduce into one the several acts in relation to the manner of electing Electors for President and Vice President of the United States, and for other purposes; an act investing the Mayor and Aldermen of the town of Tuscaloosa with power of opening roads within the corporate limits of said town; an act to repeal a certain act therein named; an act for the relief of George A. Campbell, assessor and tax collector for Autauga county; an act for the relief of Henry Linton; an act to authorize the draining of certain ponds in the county of Madison. In all of which they desire the concurrence of the Senate.

Mr Perry moved to amend the resolution, from the House of Representatives, instructing the joint committee on the state bank to report to both houses of the General Assembly all the correspondence that may have taken place between the banks in Mobile and the state bank, or its agents, in relation to any arrangements or propositions to receive the notes of each other in payment or on deposit; and all correspondence or instructions which may have led to a discontinuance of any such arrangement, by adding thereto the words "which the committee may deem material;" which was carried. Mr Picket moved to amend the resolution, by striking from the 1st line the word "consent" and inserting in lieu thereof the word "concurrence;" which was carried. The question was then put on the adoption of the resolution as amended, and determined in the affirmative. Yeas 19—Nays 1.



The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Conner, Crawford, Evans, Guth, Hubbard, McVay, Merriwether, Moore of m. Perry, Pickett, Powell, Ross, Skinner, Smith, Vining, Walthall and Wood.—Mr Moore of J. voted in the negative. *Ordered*, that the secretary acquaint the House therewith.

*Ordered*, That the Senate concur in the amendments made by the House of Representatives to the bill entitled an act for the relief of Jos. Bates, jr. taxcollector of Mobile county.

A bill to be entitled an act to discontinue and establish certain election precincts therein named, was read and ordered to a second reading on Monday next.

Bills from the House of Representatives, entitled an act to reduce into one the several acts in relation to the manner of electing electors of president and vice-president of the United States and for other purposes; an act investing the mayor and aldermen of the town of Tuscaloosa with the power of opening roads within the corporate limits of said town; an act to repeal a certain act therein named; an act for the relief of George A. Campbell, assessor and taxcollector for Autauga county; an act for the relief of Henry Linton; and an act to authorize the draining of certain ponds in the county of Madison—were severally read the first time and ordered to a second reading tomorrow.

Engrossed bills to be entitled an act to authorize the county court of Franklin county to levy a special tax for certain purposes therein named; and an act to amend an act entitled an act to incorporate Lafayette academy in the village of Lagrange; were severally read the third time and passed. *Ordered*, that the titles of the bills be as aforesaid, and that they be sent to the House of Representatives for their concurrence.

A bill to be entitled an act to appoint a commissioner for the county of Pike, was read the third time and passed. *Ordered*, that the secretary acquaint the House of Representatives therewith.

And then the Senate adjourned till tomorrow morning at 10 o'clock.

*Saturday, January 10, 1829.*

The Senate met pursuant to adjournment.

Mr Moore of m. presented the petition of Enoch Bryant, taxcollector of Marion county, praying a further time to collect and pay over the taxes of said county; which was referred to a special committee, consisting of messrs Moore of m. Hubbard and Powell, to consider and report thereon.

Mr Walthall, from the committee on inland navigation, to which was referred a bill to be entitled an act supplementary to an act entitled an act to incorporate the Cahawba navigation company, reported the same as amended; which was concurred in. *Ordered*, that the bill be engrossed and made the order of the day for a third reading on Monday next.

Mr Perry, from the committee on the judiciary, to which was referred a bill to be entitled an act prescribing the mode of obtaining the testimony of certain state officers, reported the same as amended; which was concurred in. *Ordered*, that the bill be engrossed and made the order of the day for a third reading on Monday next.

Mr Moore of J. from the joint committee on enrolled bills, reported as correctly enrolled, an act authorizing the liberation of certain slaves; and an act to authorize Zachariah Holley to emancipate certain slaves therein named; which were accordingly signed by Mr President.

Mr Wood offered the following resolution: *Resolved*, That the judiciary committee be instructed to take the deposition of Judge Perry in relation to the charges preferred by Wm. Kelly, esq. against Judges Saffold, Crenshaw and White, the sickness of his family requiring him to return to the county of Franklin as soon as possible; which was adopted.

A message from the House of Representatives, by Mr Tunstall: Mr President, The House of Representatives insist on their amendment to the 4th section of the bill entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named. They also insist on their amendment to the 5th section of the bill. They also insist on their disagreement to the amendment made by the Senate to the end of the 5th section of the bill. They recede from their amendment to the 9th

section of the bill by inserting the word *white* after *free*. They insist on their amendment to the 10th section of the bill by striking from the 7th line the words 'classed and.' They recede from their amendment to the 10th section of the bill by adding the words "of equal or inferior value." They recede from their disagreement to the amendment made by the Senate to their amendment to the 12th section of the bill. They insist on their amendment to the bill by adding section No 14. They have appointed a committee of conference on their part, consisting of messrs Parsons, Lewis of m. Terry, Fearo and Barton, to act with such committee as may be appointed on the part of the Senate, on the subject matter of difference between the two Houses as to the amendments to said bill.

On motion of Mr Hubbard, *Ordered*, That a committee be appointed on the part of the Senate, to confer with the committee appointed by the House of Representatives, on the subject of the disagreement between the two Houses, in relation to the amendments made by the House to the bill entitled an act to enable the State of Alabama to sell and dispose of certain lands therein named—Whereupon, Messrs Hubbard, Ross, Evans, Abercrombie and Merriwether were appointed on the part of the Senate. *Ordered*, That the Secretary acquaint the House of Representatives therewith.

A message from the House of Representatives, by Mr Tunstall: Mr President, The House of Representatives have passed bills which originated in their House, entitled an act to repeal in part and amend a certain act, requiring the Judges of the circuit courts to alternate; and an act to refund to the county Treasury of Wilcox county a sum of money therein mentioned. In which they desire the concurrence of the Senate.

A bill from the House of Representatives entitled an act to repeal in part and amend a certain act requiring the Judges of the circuit courts to alternate; was read, and the question being put "shall the bill be read the second time on Monday next?" it was determined in the negative. So the bill was lost.

A bill from the House of Representatives, entitled an act to refund to the county Treasury of Wilcox county a sum of money therein mentioned, was read and ordered to a second reading on Monday next.

Mr Smith introduced a bill to be entitled an act giving further jurisdiction to Judges of the county courts and commissioners of roads and revenue; which was read and ordered to a second reading on Monday next.

Mr Ross offered the following resolution: *Resolved*, That the Secretary of the Senate be instructed to furnish the House of Representatives with a copy of the charges preferred by William Kelly, Esq. against Judges Crenshaw, White and Saffold, together with their responses, and that the House be requested to raise a committee to act jointly with such committee as may be appointed on the part of the Senate to investigate said charges, with power to send for persons and papers. Mr Smith moved that the resolution lie on the table; which was carried. Yeas 18—nays 3.

The yeas and nays being desired, those who voted in the affirmative are, messrs Abercrombie, Conner, Crawford, Evans, Garth, Hubbard, Mr Vay, Merriwether, Moore of J. Moore of m. Pickett, Powell, Skinner, Smith, Young, Wadhall, Watkins and Wood.

Those who voted in the negative are, Mr President, Perry and Ross.

So the resolution was laid on the table.

A bill to be entitled an act to compel the president and trustees of the town of Moulton to keep their streets in repair, was read the 2d time and ordered to be engrossed for a third reading on Monday next.

A bill to be entitled an act to reduce into one the several acts in relation to the manner of electing electors for President and Vicepresident of the United States, and for other purposes, was read the 2d time and referred to the committee on the judiciary to consider and report thereon.

A bill to be entitled an act investing the mayor and aldermen of the town of Tuscaloosa with the power of opening roads within the corporate limits of said town; was read the second time and referred to the committee on roads, bridges and ferries.

Bills of the following titles, to wit: an act for the relief of Henry Linton; and

an act to authorize the draining of certain ponds in Madison county, were severally read the second time and ordered to a third reading on Monday next.

A bill to be entitled an act for the relief of George A. Campbell, assessor and tax collector for Autauga county, was read the second time and referred to the committee on propositions and grievances.

A bill to be entitled an act to repeal a certain act therein named, was read the 2d time. (This bill proposes the repeal of a law now in force prohibiting the importation of slaves into this state for sale or hire.) Mr Crawford moved that the further consideration of the bill be indefinitely postponed; which was lost. Yeas 6—Nays 15.

The yeas and nays being tested, those who voted in the affirmative are, Messrs Crawford, Geth, McVay, Powell, Skinner and Smith.

Those who voted in the negative are, Mr President, Abercrombie, Conner, Evans, Hammond, Meriwether, Moore of J. Moore of M. Perry, Pickett, Ross, Young, Walcott, Watkins and Wood.

Mr Crawford then moved that the bill be referred to the committee on the judiciary, with instructions to inquire into the expediency of levying and collecting a tax upon all negroes which may hereafter be brought into the State for sale or hire, or carried through the State; which was lost. *Ordered*, That the bill be made the order of the day for a third reading on Monday next.

Mr Smith offered the following resolution: *Resolved*, That the judiciary committee be instructed to inquire into the expediency of giving a summary remedy against Executors, Administrators and Guardians, with leave to report by bill or otherwise; which was adopted. Yeas 16—nays 3.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Geth, Hammond, McVay, Meriwether, Moore of J. Moore of M. Perry, Pickett, Powell, Ross, Skinner, Smith, Young and Wood.

Those who voted in the negative are, Messrs Crawford, Evans and Walcott.

And then the Senate adjourned till Monday morning at 10 o'clock.

*Monday, January 12th, 1829.*

The Senate met pursuant to adjournment.

Mr Walcott from the committee on inland navigation, to which was referred a petition on the subject, reported a bill to be entitled an act declaring Flat river in Madison county a public highway, from Scott's Mill to Harding's Cotton Factory; which was read and ordered to a second reading to-morrow.

Mr Perry from the committee on the judiciary, to which was referred a bill to be entitled an act to regulate the proceedings in the courts of law in this State, reported the same without amendment. *De Fez L.* Put the bill on the table.

Mr Perry from the same committee to which was referred a resolution on the subject, reported a bill to be entitled an act prescribing the mode of procuring the attendance of witnesses in the several courts of this State; which was read and ordered to a second reading to-morrow.

Mr Perry from the same committee to which was referred a resolution of the Senate, reported a bill to be entitled an act to require Judges of the county courts to renew their bonds; which was read and ordered to a second reading to-morrow.

Mr Perry from the same committee to which was referred a resolution of the Senate, reported a bill to be entitled an act giving a summary mode of proceeding against Sheriffs in certain cases; which was read and ordered to a second reading to-morrow.

Mr Perry from the same committee, reported a bill to be entitled an act regulating judicial proceedings on writs of error from the county to the circuit courts; which was read and ordered to a second reading to-morrow.

Mr Perry from the same committee to which was referred the communication from the Governor, on the subject of the unsettled accounts between this State and the State of Mississippi, reported a bill to be entitled an act approving and confirming the contract made by the Governors of the States of Mississippi and Alabama, in relation to the unsettled accounts between the two States; which was read and ordered to a second reading to-morrow.

Mr Perry from the same committee to which was referred so much of the Governor's message as relates to the Fabricker Book and the St. Stephens Steam Boat Company, asked to be discharged from the further consideration of the subject; which was agreed to.

Mr Perry from the same committee to which was referred the resolutions of the Legislature of the State of Ohio, disagreeing to the resolutions of the State of South Carolina, reported that the committee not having had the possession of the resolutions of South Carolina referred to, and not knowing what they contain, have instructed him to ask to be discharged from the further consideration of the subject; which was agreed to.

Mr Perry from the same committee to which was referred a resolution of the Senate, instructing them to inquire into the expediency of authorizing justices of the peace with a jury to try cases of affrays, and assaults and batteries, reported, that the subject matter of the resolution, being contained in a bill now before the Senate; the committee had instructed him to ask to be discharged from the further consideration thereof; which was agreed to.

Mr Perry from the same committee to which was referred a resolution, instructing them to inquire into the expediency of establishing a separate orphans court, reported that it is inexpedient in the opinion of the committee to do so; which was concurred in.

Mr Perry from the same committee to which was referred the letter of John Elliott, Esq. accompanying the Governor's message, reported a bill to be entitled an act to compensate John Elliott for services rendered the State; which was read and ordered to a second reading to-morrow.

Mr Perry from the same committee to which was referred a bill to be entitled an act to suppress vice and immorality and punish the same, reported the bill without amendment. *Ordered*, That the bill lie on the table.

Mr Moore of J. from the joint committee on enrolled bills, reported as correctly enrolled, an act to reduce into one the several acts giving fees to justices of the peace and constables, and for other purposes; and an act to emancipate certain slaves therein named; which were accordingly signed by Mr President.

On motion of Mr Evans, *Ordered*, That Mr Perry be added to the committee on county boundaries.

Mr Ross from the special committee to which was referred the petition of sundry citizens of Mobile, reported a bill to be entitled an act to emancipate a certain slave therein named; which was read and ordered to a second reading to-morrow.

A message from the Governor, by Mr Thornton:

*January 12th, 1829.*—Mr President, I am instructed by the Governor to inform your Honorable body, that he did on the 3rd inst. approve and sign, an act to amend an act entitled an act to incorporate the town of Tuscaloosa, &c. approved, January 12th, 1828; and on the 10th inst. an act to increase the salary of the State Printer; both of which originated in the Senate.

Mr Watkins from the joint committee elected to examine into the state and condition of the Bank of the State of Alabama, submitted the following report:

The Joint Committee appointed by the General Assembly to examine the situation and condition of the Bank of the State of Alabama, respectfully report: That in the discharge of the duties assigned them, they in the first place proceeded to inquire into the solvency of the debtors to the institution by all the means within their controul. This examination presented the result of 3507 dolls. in doubtful debts, and of 8606 dolls. in bad debts. The exhibit marked A shows the bad and doubtful debts which have been discovered and the counties in which the debtors reside. It is due to the board of directors to state that but a small and decreasing amount of bad and doubtful debts compared with the results of previous years, appear to have been contracted during the present term of their service. It was apparent to the committee that the least secure debts due to the bank, were such as were due on the longest term of credit, and most of which were contracted more than three years ago. It is to be anticipated that a still more general acquaintance with the credit of individuals, and a discrimination, the result of longer experience on the part of the several officers of the bank, will in future greatly lessen the amount of bad debts. By an examination of the debts due the bank for two successive years it will be found that the number of doubtful debts are progressively decreasing, though the operations of the bank have been regularly increasing. Exhibit B shows the operation of the bank from the 21st day of December, 1827, to the 5th day of January, 1829, inclusive. By the expose it will be seen that the bank is liable for the sum of 475,293 dolls. 19 1/2 cents. This sum consists of the amount due to individual depositors, and the notes of the bank in circulation; and the means of meeting this liability consists of specie on hand, notes of other banks, bills of exchange and accounts due in account from other banks. These several funds amount to 575,099 66 1/2

showing an excess of 99 794 dolls. 46 3-4 cts. in available means over and above the liabilities of the bank. In addition to the amount of 575.019 dolls. 66 1-4 cts. above alluded to, which constitutes a fund admitting of the ready application to any possible emergency, there is due to the bank on individual notes discounted 344,687 dolls. 78 cts. With the above means at the disposal of the bank, the prudence which has heretofore characterized the board of directors and its several officers, will doubtless sustain the institution in a course of successful operation. In obedience to a request of the committee the cashier has furnished an expose of the items composing the general account of individual depositors, which is herewith submitted—marked C. and by reference to which it will be discovered that of the whole amount amounting to 135 682 dollars 19 1-2 cts. only 20,044 19 1-2 cts. is subject to be checked for by individuals. The less apprehension therefore may be entertained of inconvenience arising from an unexpected or capricious check on the bank for the amount of such deposits. The committee beg leave to present a letter received by them from the president, urging the necessity of an additional clerk or bookkeeper for the bank, a copy of which is herewith enclosed—marked D. They would respectfully suggest that during the time they have been engaged in their examination of the bank they have observed, with every possible diligence on the part of the officers of the bank, the greatest parsimony of business has continued. They deem it impossible, when the labours of the officers shall have been increased, by keeping a separate account of deposits with every six-cent section which may be sold in the state under the act of the last legislature, than the accuracy which so eminently characterize their business at present can continue. They would therefore respectfully submit the propriety of authorizing the directors to employ an additional clerk for at least four months in each year.

*J. Watkins, J. W. Garth, D. Hubbard, Com. of Senate.*

*D. H. Lewis, S. Walker, Harden Perkins, Com. of H. of Reps.*

**EXHIBIT A**—Showing the bad and doubtful debts of the bank of the state of Alabama. Money accounts 400 dollars, bad—Fitch 75 cents—Fisk 120 bad—Jackson 3160 bad; 1800 doubtful—Lauderdale 1000 do—Greene 730 bad—Jefferson 335 bad; 70 doubtful; Pike 400 bad—Pritchard 1315 bad—Tunstall 190 bad; 240 doubtful—Lawrence 4600 doubtful. Total, bad 8507; doubtful 8605.

(B.) An exhibit showing the result of the operations of the bank of the state of Alabama, from the 21st day of December, 1827, to the 6th day of January, 1829, inclusive: Capital stock 451 024 dolls. 60 3-4 cts.—Notes of the institution in circulation 329, 113 dolls.—Due to individual depositors 135,682 dollars 19 1-2 cts.—Balance on the 21st Dec. 1827, as per last report 3555 dolls. 80 cts. and profits from 21st Dec. 1827 to Jan. 6, 1829 is 12,639 dolls. 49 cts. making 56,195 dolls. 31 cts. Total, *D* 931,95 11 1-4.

Due on individual notes discounted 344,577 78—Banking house at Cahawba at cost 1099 67, and banking house and lot at Tuscaloosa at cost 8600 15 making 9698 82.—Permanent expense acct. being amt. paid for bank furniture 597 67—Due from solvent banks in account 59 658 34 1-2, notes of other solvent banks on hand 817 52, specie 32 410 32 3-4, counterfeit notes 73, bills of exchange on New Orleans and Mobile 393 898 96 making 575 377 63 3-4—Paid interest and dividends to the several funds composing the capital up to the 9th day of Nov. last 51 658 21. Total *D* 911,985 11 1-4.

(C.) Bank of the State of Alabama, Tuscaloosa, Jan. 10, 1829. Sir: In compliance with your request I have the pleasure herewith to furnish you an expose of the items composing the general account of individual depositors, amounting as reported in your exhibit of the 6th inst. to 135,682 dollars 19 1-2 cts. The items are as follows, viz: To the credit of the state treasurer 56,792—do do university fund and agent 10 546—as partial payments on notes 38 307—to the credit of individuals for general acct. and subject to be checked for 20 044 9 1-2—making 135,682 19 1-2. Very respectfully  
J. B. COOK, Cashier.

For T. Watkins, chairman of the com. on the part of the Senate.

(D.) Copy of a letter from Henry B. Fountain to the committee on the state bank, dated Bank of the state of Ala. Tuscaloosa, Jan. 8, 1828. Gentlemen—I am requested by a resolution of the board of directors to communicate to the joint committee on the state bank, the necessity of employing an additional clerk or bookkeeper for this bank for at least four months in each year. The board are of opinion that it would be improper for them to employ and pay an additional officer, without being authorized to do so by the legislature, and to attain that object in the most expeditious way they have deemed it best to bring the matter before you, hoping and soliciting that you will take it into consideration as soon as practicable; and if you sustain them in the opinion that an additional officer is necessary, that you will propose to the same to your respective houses. By an examination of the several officers I perceived myself that you will agree with the board of directors, that it is impossible to perform their duties with that accuracy and dispatch which is indispensable in banking institutions. You will find that the teller is unable to settle his cash account oftener than twice a week, and which should be done

Every evening to test the correctness of the day's transactions. I have the honor to be,  
 very respectfully &c. (Signed) KENT B. FORTAIN Secy

*Ordered*, That the report lie on the table, and that 300 copies thereof be printed for the use of the Senate.

Mr Pickett introduced a joint memorial to the Congress of the United States, asking for a modification of the act granting certain relinquished lands to the state of Alabama; which was read and ordered to a second reading to-morrow.

A message from the House of Representatives, by Mr Tunstall: Mr President, The House of Representatives concur in the amendments made by the Senate to the resolution proposing, with the consent of the Senate, that the joint committee on the State Bank be instructed to report to both Houses of the General Assembly all the correspondence that may have taken place between the Banks of Mobile and the State Bank, or its agents, in relation to any arrangements or propositions to receive the notes of each other in payment or on deposit; and all correspondence or instructions which may have led to a discontinuance of any such arrangements. They have passed a bill which originated in the Senate entitled an act to extend the limits of Clarke county, and have amended the same as herewith shown: in which they desire your concurrence. They have postponed until the 1st Monday in March next the engrossed bill from the Senate entitled an act to amend an act entitled an act to regulate proceedings in chancery suits, passed 1st Jan 1823. They have passed bills which originated in the House of Representatives, entitled an act to divorce John Layman from Rebecca Layman, an act to authorize Simon Bowden to emancipate a certain slave named Peter; an act to authorize the judges of the county courts and commissioners of roads and revenue of the counties of St Clair and Shelby to levy a special county tax for purposes therein named; an act to repeal in part and to amend an act to authorize John Smith, of Jefferson county, to emancipate a certain slave therein named; an act for the relief of the purchasers of the 16th section in township one and range eleven in Lauderdale county; and an act to emancipate a certain slave therein named. In all of which they desire your concurrence.

*Ordered* that the bill entitled an act to extend the limits of Clarke county together with the amendments made thereto by the House of Representatives, be committed to the committee on county boundaries.

Bills from the House of Representatives, entitled an act to authorize Simon Bowden to emancipate a certain slave named Peter; an act to authorize the judges of the county courts and commissioners of roads and revenue of the counties of St. Clair and Shelby to levy a special tax for the purposes therein named; an act to repeal in part and to amend an act entitled an act to authorize John Smith of Jefferson county, to emancipate a certain slave therein named; an act for the relief of the purchasers of the 16th section in township one and range eleven in Lauderdale county; an act to emancipate a certain slave therein named; and an act to divorce John Layman from Rebecca Layman; were severally read the first time and ordered to a second reading to-morrow.

Mr Ferry introduced a bill to be entitled an act further to amend the attachment laws; which was read and ordered to a second reading to-morrow.

Mr McVay, moved to take up the bill to be entitled an act to improve the navigation of the Tennessee river; which was lost. Yeas 7—Nays 13.

The yeas and nays being desired, those who voted in the affirmative are, messrs Garth, McVay, Moore of J. Powell, Smith, Vining and Wood.—Those who voted in the negative are, Mr President, Conner, Crawford, Evans, Hubbard, Merriwether, Moore of m. Perry, Pickett, Ross, Skinner, Walthall and Watkins.

Mr Pickett presented the petition and affidavit of George A. Campbell, assessor and taxcollector for Autauga county; which were referred to the committee on propositions and grievances.

Engrossed bills to be entitled an act prescribing the mode of obtaining the testimony of certain state and other officers therein named; an act to compel the president and trustees of the town of Moulton to keep their streets in repair and for other purposes; and an act supplementary to an act entitled an act to incorporate the Cahawba navigation company; were severally read the third time and passed. *Ordered*, that the titles of the bills be as aforesaid, and that they be sent to the House of Representatives for their concurrence.

Bills from the House of Representatives, of the following titles to wit: an act to authorize the draining of certain ponds in the county of Madison; an act to repeal a certain act therein named; and an act for the relief of Henry Linton; were severally read the third time and passed. *Ordered*, That the secretary acquaint the House of Representatives therewith.

A bill to be entitled an act giving further jurisdiction to judges of the county courts and commissioners of roads and revenue, was read the second time and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act to refund to the county treasury of Wilcox county a sum of money therein mentioned, was read the second time and ordered to a third reading to-morrow.

A bill to be entitled an act to discontinue and establish certain election precincts therein specified, was read the second time. Mr Moore of J. offered an amendment to the bill, discontinuing an election precinct heretofore established at Royal's mill, in Jackson county, and establishing one at Bolivar in said county; which was adopted. Mr Ross offered an amendment to the bill, establishing an election precinct at Madam McKemie's at the mouth of Ben Secaur river, in Baldwin county; which was adopted. Mr Powell offered an amendment, discontinuing an election precinct heretofore established at Joseph Ballack's in Tuscaloosa county, and establishing one at Moses Deuman's in said county; which was adopted. *Ordered*, that the bill be made the order of the day for the third reading to-morrow.

And then the Senate adjourned till 3 o'clock this evening.

*Evening Session.*—Mr Moore of J. from the joint committee on enrolled bills, reported as correctly enrolled, an act for the relief of Jos. Bates, jr. taxcollector of Mobile county; which was accordingly signed by Mr President.

Mr McVay, from the committee on propositions and grievances, to which was referred the bill to be entitled an act for the relief of George A. Campbell, assessor and taxcollector for Autauga county, reported the same without amendment. *Ordered*, That the bill be made the order of the day for a third reading to-morrow.

Mr Walthall moved to take up the resolution offered by Mr McVay on the 29th of Dec. last, proposing, with the concurrence of the House, that the General Assembly would adjourn *sine die* on the 10th inst.; which was carried. Mr Walthall then moved to amend the resolution by striking out the 10th and inserting the 22d Jan. so as to adjourn *sine die* on the 22d inst.; which was carried. The resolution as amended was then adopted. *Ordered*, that the secretary acquaint the House therewith.

Mr Powell offered the following resolution: *Resolved*, That, with the concurrence of the House of Representatives, the two Houses of the General Assembly will convene on to-morrow, at 6 o'clock, p. m. in the Representative Hall, for the purpose of electing a President and twelve Directors of the bank of the state of Alabama; which was adopted.

Mr Abercrombie called up the bill to be entitled an act to prevent persons being sued in civil cases before justices of the peace out of the company boat in which they permanently reside. The question was put, shall the bill be engrossed and made the order of the day for a third reading to-morrow? and carried. Yeas 11—Nays 8.—The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Crawford, Hubbard, McVay, Perry, Picken, Ross Skinner, Walthall and Watkins.—Those who voted in the negative are, messrs Evans, Garth, Merriwether, Moore of J. Moore of M. Powell, Smith and Young.

So the bill was ordered to be engrossed.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Tuesday, January 13, 1829.*

The Senate met pursuant to adjournment.

Mr Evans presented the petition of sundry inhabitants of Wilcox county, praying that a certain part of Wilcox county may be added to Clarke county; which was read and referred to the committee on county boundaries.

Mr Perry, from the committee on the judiciary, to which was referred a resolution of the Senate, reported a bill to be entitled an act the better to secure the collection of the state revenue; which was read and ordered to a second reading to-morrow.

Mr Moore of M. from the special committee to which was referred the petition of Enoch Bryant, reported a bill to be entitled an act for the relief of Enoch Bryant; which was read and ordered to a second reading to-morrow.

Mr Perry, from the special committee to which was referred the bill to be entitled an act for the relief of David M. Snigle, reported the same as amended; which was concurred in. *Ordered*, That the bill be engrossed and made the order of the day for a third reading to-morrow.

**Mr Crawford** introduced a bill to be entitled an act to amend the laws relative to ferries, bridges and ferries; which was read and ordered to a 2d reading to-morrow.

**Mr Merriwether** introduced a bill to be entitled an act prescribing the duties of sheriffs and returning officers in holding elections and returning the votes of all the persons voting on the proposed alterations of the constitution of the state of Alabama; which was read and ordered to a second reading to-morrow.

**Mr Hubbard**, from the special committee to which was referred resolutions of the state of Vermont on resolutions of the states of Maine and Connecticut, in relation to making internal improvements from the revenue of the United States, asked leave to be discharged from the further consideration thereof; which was agreed to.

An engrossed bill to be entitled an act giving further jurisdiction to judges of the county courts and commissioners of revenue and roads, was read the third time. **Mr Ross** moved that the bill lie on the table till the first day of June next; which was carried. Yeas 11—Nays 9

The yeas and nays being desired, those who voted in the affirmative are, messrs Abercrombie, Conner, Evans, Merriwether, Moore of J. Moore of M. Perry, Pickett, Powell, Ross and Watkins.—Those who voted in the negative are, Mr President Crawford, Garth, Hubbard, McVay, Skinner, Smith, Vining and Walthall.

An engrossed bill to be entitled an act to prevent persons being sued in civil cases before justices of the peace out of the company beat in which they permanently reside, was read the third time, and the question being put, Shall the bill pass? it was determined in the negative. Yeas 10—Nays 10 —The yeas and nays being desired, those who voted in the affirmative are, messrs Abercrombie, Conner, Crawford, Hubbard, McVay, Perry, Pickett, Ross, Walthall and Watkins.—Those who voted in the negative are, Mr President, Evans, Garth, Moore of J. Moore of M. Merriwether, Powell, Skinner, Smith and Vining.

Bills from the House of Representatives, entitled an act to discontinue and establish certain election precincts therein specified; an act to refund to the county treasury of Wilcox county a sum of money therein mentioned; and an act for the relief of George A. Campbell, assessor and taxcollector of Autauga county; were severally read the third time and passed. *Ordered*, that the secretary acquaint the House of Representatives therewith.

**Mr Moore of J.** moved to reconsider the vote of the Senate on the passage of the bill entitled an act to prevent persons being sued in civil cases before justices of the peace out of the company beat in which they permanently reside; which was carried. *Ordered*, that the bill lie on the table till to-morrow.

A bill to be entitled an act further to amend the attachment laws, was read the second time and referred to the committee on the judiciary, to consider and report thereon.

Bills of the following titles, to wit: An act giving a summary mode of proceeding against sheriffs in certain cases; an act approving and confirming the contract made by the Governors of the states of Mississippi and Alabama, in relation to the unsettled accounts between the two states; an act to compensate John Elliott for services rendered the state; an act regulating judicial proceedings on writs of error from the circuit to the county courts; an act to emancipate a certain slave therein named; an act prescribing the mode of procuring the attendance of witnesses in the several courts of this state; and an act declaring Flint river, in Madison county, a public highway from Scott's mills to Harding's cotton factory; were severally read the second time and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act to require the judges of the county courts to renew their bonds, was read the second time. **Mr Ross** offered an amendment to the bill, authorizing judges of the circuit courts to approve the bonds of sheriffs and taxcollectors; which was adopted. *Ordered*, that the bill be engrossed and made the order of the day for a third reading to-morrow.

Bills from the House of Representatives entitled an act to emancipate a certain slave therein named; an act to authorize the judges of the county courts and commissioners of roads and revenue of the counties of St Clair and Shelby to levy a special tax for certain purposes therein named; an act to authorize Simon Bowden to emancipate a certain slave named Peter; an act for the relief of the purchasers of



the 16th section in township one, range eleven, in Lauderdale county; and an act to repeal in part and amend an act entitled an act to authorize John Smith, of Jefferson county, to emancipate a certain slave therein named; were severally read the second time and ordered to a third reading to-morrow.

A bill to be entitled an act to divorce John Layman from Rebecca Layman, was read the second time and referred to the committee on divorce and alimony to consider and report thereon.

A joint memorial to the Congress of the United States, asking for a modification of the act granting certain relinquished lands to the State of Alabama, was read the second time. Mr McVay moved that the further consideration of the memorial be indefinitely postponed. Mr Moore of J. moved that the memorial lie on the table; which was carried.

And then the Senate adjourned till 3 o'clock this evening.

*Evening Session, Tuesday, January 13th, 1829.*—Mr President laid before the Senate the following communication from William Kelly, Esq.

*Tuscaloosa, January 13th, 1829.*

*Hon. Nicholas Davis—Sir:* Since the time of submitting my grounds of complaint against Judge Crenshaw, I have been informed that he failed and neglected to hold the circuit court of Marengo, at the last term—This is a prima facie breach of duty, and violation of law. I am unapprised of any legal excuse for the failure, if he has any, I wish him to have an opportunity to make it, and therefore; respectfully request that, that failure may be added to my former grounds of complaint, and a copy furnished to the party implicated. With unshaken conviction in the correctness of my former views, and unabated confidence in the tribunal I address, allow me to request the President of the Senate to submit this letter to the consideration of that body. I have the honor to be, with great respect, your ob't serv't.

(Signed)

WM. KELLY.

*Ordered,* That the communication lie on the table, and that the Secretary furnish Judge Crenshaw, with a copy thereof.

Mr Powell presented the account of John W. Napier, against the State; which was referred to the committee on accounts and claims.

Mr Abercrombie presented the petitions of sundry inhabitants of Dallas, Wilcox and Montgomery counties, on the subject of county boundaries; which were referred to the committee on county boundaries.

And then the Senate adjourned till to-morrow morning at 10 o'clock

*Wednesday, January 14th, 1829.*

The Senate met pursuant to adjournment.

Mr Moore of J. from the joint committee on enrolled bills, reported as correctly enrolled an act to appoint a commissioner for the county of Pike; an act to amend an act entitled an act to provide for keeping in repair a certain road therein mentioned; and an act prohibiting certain persons from exercising the powers of justices of the peace and constables of this State; which were accordingly signed by Mr President.

Mr Watkins from the joint committee appointed to examine into the situation of the Bank of the State of Alabama, submitted the following report: The joint committee of the two Houses, appointed to examine the situation of the State Bank, and to which was referred a resolution of the two Houses, requiring said committee to report the correspondence between the Bank of the State and Mobile Banks, upon the subject of their collecting the bills of exchange of each other, and receiving the bills of each other in payment or on deposite as their own, have examined the same and report the following contract marked A, and the enclosed letters and papers marked from letter A to J which includes all the correspondence between the two Banks, which the committee think necessary to report in obedience to the resolution to them referred.

Mr Garth called up the resolution offered by him on Friday last, instructing the judiciary committee to arrange and report specifications from the charges exhibited by William Kelly, against Judges White, Saffold and Crenshaw, Mr Garth then moved to amend the resolution by striking out all after the word *Resolved*, and inserting the following: "That the charges preferred against Judges White, Saffold

and Crenshaw, by William Kelly, Esq. together with the answers of the Judges implicated, be referred to the committee on the judiciary, with instructions to take the testimony of such witnesses as may be offered by either party, and report the same to the Senate." Mr Moore of J. moved to amend the amendment with the following: "and that the chairman shall be authorized to issue subpoenas for witnesses and appoint a person to execute the same;" which was carried. The amendment as amended was then agreed to, and the resolution adopted.

Mr Abercrombie moved that Mr Ross be added to the committee on county boundaries; which was carried. Yeas 14—nays 3.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Crawford, Garth, McVay, Moore of J. Moore of M. Pickett, Powell, Skinner, Vining, Walthall, Watkins and Wood.

Those who voted in the negative are, Messrs Conner, Perry and Smith.

On motion of Mr Garth, *Ordered*, That Mr Wood be added to the committee on county boundaries.

Mr Powell presented the account of Elias Jenkins against the State; which was referred to the committee on accounts and claims.

Mr Smith introduced a bill to be entitled an act to establish an Academy at Sugsville in Clarke county, and for other purposes; which was read the first and second time and ordered to be engrossed for a third reading to-morrow.

An engrossed bill to be entitled an act to prevent persons being sued in civil cases before justices of the peace out of the company beat in which they permanently reside, was read the third time, amended by way of rider, and the question being put, "shall the bill pass?" it was determined in the affirmative. Yeas 13—nays 8.

The yeas and nays being desired those who voted in the affirmative are, Mr President, Abercrombie, Conner, Crawford, Hubbard McVay, Perry, Pickett, Ross, Skinner, Walthall, Watkins and Wood.

Those who voted in the negative are, messrs Evans, Garth, Merriwether, Moore of J. Moore of m. Powell, Smith and Vining.

Mr President laid before the Senate the following communication from Judge Crenshaw :

*Tuscaloosa, January 14, 1829.*

*The Hon. the President of the Senate*—Dear Sir : Herewith I have the honor of transmitting to you my answer to the additional charge preferred against me on yesterday by Wm. Kelly. If that charge is considered as being before the Senate, I respectfully request that you would lay the answer also before that honorable body. With great respect, I am your ob't serv't. (Signed) A. CRENSHAW.

*Ordered*, That the answer of Judge Crenshaw to the additional charge preferred against him by Wm. Kelly be referred to the committee on the judiciary, and that a copy thereof be furnished Wm. Kelly by the secretary.

The following communication was received from the Governor, by Mr Thornton.

EXECUTIVE DEPARTMENT, Tuscaloosa, January 13, 1829.

*The Hon. the President and Members of the Senate :*

Gentlemen —I have the honor to transmit you a memorial of certain merchants, bankers and citizens of New York, and a memorial of citizens of Mobile, on the subject of appointing commissioners in the several states, and especially at New-York, Philadelphia and Boston, to take the acknowledgement or proof of deeds, mortgages, covenants of attorney, and all instruments under seal. The provision which is already made by the laws of the state, seems to be confined to deeds and conveyances for real estate, and even in these cases might be made more convenient by the additional appointment of commissioners whose special duty as well as interest it would be to give prompt and careful attention to such business. I beg leave to submit to the provident wisdom of the General Assembly, whether the appointment of commissioners might not facilitate the necessary transactions of merchants, traders and others, according to the suggestions contained in the memorials. I have the honor to be, most respectfully, ob't serv't. J. MURPHY.

*Ordered*, That the communication lie on the table.

A message from the House of Representatives, by Mr Tunstall: Mr President, The House of Representatives concur in the resolution of the Senate to go into the election of a president and twelve directors of the state bank, and have amended the same by striking out 'six o'clock this evening' and inserting 'on Saturday next at two o'clock, pm.' They have further amended the resolution by adding thereto 'a state printer, and portwarden for the port of Mobile?' in which amendments they

desire the concurrence of the Senate. They have passed a bill which originated in the House, entitled an act for the relief of Elijah Smith, taxcollector of Franklin county : in which they desire your concurrence.

*Ordered*, That the Senate concur in the amendments made by the House to the resolution proposing to go into the election of a president and twelve directors of the bank of the state of Alabama. *Ordered*, that the secretary acquaint the House of Representatives therewith.

A bill from the House of Representatives, entitled an act for the relief of Elijah Smith, taxcollector of Franklin county, was read and ordered to a second reading to-morrow.

Engrossed bills of the following titles, to wit: An act to require judges of the county courts to renew their bonds, and for other purposes; an act declaring Flint river, in Madison county, a public highway from Scott's mill to Harding's cotton factory; an act prescribing the mode of procuring the attendance of witnesses in the several courts of this state; an act to emancipate a certain slave therein named; an act for the relief of David M. Smithson; an act giving a summary mode of proceeding against sheriffs in certain cases; and an act regulating judicial proceedings on writs of error from the county to the circuit courts—were severally read the third time and passed. *Ordered*, That the titles of the bills be as aforesaid, and that they be sent to the House of Representatives for their concurrence.

An engrossed bill to be entitled an act to compensate John Elliott for services rendered the state, was read the third time. Mr Perry moved to fill the blank in the bill with '\$100,' as the compensation to Mr Elliott for his services in prosecuting a writ of quo warranto against the Tombeckbe bank: which was lost. Mr Wood moved to fill the blank with '\$75; which was lost. Mr Smith proposed \$60, as the compensation; which was lost. Mr Watkins moved to fill the blank with '\$50. *Ordered*, that the bill lie on the table.

A bill to be entitled an act for the relief of the purchasers of the 16th section in township 1, range 11, in Lauderdale county, was read the third time. Mr Garth moved that the bill lie on the table till the first day of the next session of the General Assembly; which was carried.

Bills from the House of Representatives, entitled an act to repeal in part and amend an act entitled an act to authorize John Smith of Jefferson county to emancipate a certain slave therein named; an act to emancipate a certain slave therein named; and an act to authorize the Judges of the county courts and commissioners of roads and revenue of the counties of St. Clair and Shelby to levy a special county tax for certain purposes therein named; were severally read the third time and passed. *Ordered*, that the secretary acquaint the House of Representatives therewith.

A bill to be entitled an act prescribing the duties of sheriffs and returning officers in holding elections and returning the votes of all persons voting on proposed alterations of the constitution of the state of Alabama; an act to amend the several laws relative to roads, bridges and ferries; an act for the relief of Enoch Bryant; an act the better to secure the collection of the state revenue; were severally read the second time and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act to authorize Simon Bowden to emancipate a certain slave named Peter; was read the third time and passed.

Mr Perry introduced a bill to be entitled an act extending the powers of the judge of the county court and commissioners of roads and revenue of the county of Dallas; which was read and ordered to a second reading to-morrow.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Thursday, January 15, 1829.*

The Senate met pursuant to adjournment.

Mr Perry introduced a bill to be entitled an act to provide for ascertaining the sense of the citizens of Dallas county with regard to the seat of justice in said county: which was read and ordered to a second reading to-morrow.

A message from the House of Representatives, by Mr Tunstall: Mr President, The House of Representatives concur in the amendments made by the Senate to the bill entitled an act to discontinue and establish certain election precincts therein specified. They have passed bills which originated in the Senate, entitled an act to

to amend in part the 4th section of an act passed at the last General Assembly, appointing commissioners for Dale county and for other purposes; joint memorial to the congress of the United States in behalf of Sally Halton and William Merrell; an act to change the time of holding the county courts of Franklin county; an act to alter and amend an act entitled an act to establish a permanent road from Florence in the county of Lauderdale to Athens in Limestone county, and have amended the latter bill in the manner herewith shewn. In which they desire the concurrence of the Senate. They have passed bills which originated in the House of the following titles, to wit: an act to amend an act entitled an act to establish and improve a certain road therein mentioned, approved, January 13, 1826, and for other purposes; an act to repeal in part an act to locate the seat of justice for Fayette county, passed January 12, 1826; an act to divorce John Lindsay from his wife Abbey Lindsay; an act to provide for the payment of grand and petit jurors in the county of Jackson; an act to incorporate the Trustees of the Wilcox society for the encouragement of literature; an act authorizing William Burns and William W. Pruitt to continue their mill on Paint Rock river; an act to authorize Hector Garrett to emancipate a certain slave therein mentioned; an act to authorize the judge of the county court and commissioners of roads and revenue of Fayette county to levy an extra tax; an act supplementary to an act entitled an act to authorize the sheriff or coroner of the county of Shelby to sell lands and slaves levied on by execution at the town of Montevallo, passed at the present session of the Legislature; an act to incorporate the Athens male academy in Limestone county; an act for the relief of William May and James Reynolds; an act respecting bail; an act to authorize George W. Stoneroad to emancipate certain slaves therein mentioned; an act for the relief of Susannah Casey; an act to legalize registering certain deeds or conveyances of land in this State; joint memorial to the congress of the United States, in favor of Col. David White; and an act to incorporate the Mobile marine railway and insurance company. In all of which they desire the concurrence of the Senate.

*Ordered*, that the Senate concur in the amendment made by the House of Representatives to the bill entitled an act to alter and amend an act entitled an act to establish a permanent road from Florence in the county of Lauderdale to Athens in Limestone county. *Ordered*, that the secretary acquaint the House of Representatives therewith.

Bills from the House of Representatives of the following titles, to wit: an act to amend an act entitled an act to establish and improve a certain road therein mentioned, approved, January 13th, 1826, and for other purposes; an act to repeal in part an act to locate the seat of justice for Fayette county, passed January 12th, 1826; an act to divorce John Lindsay from his wife Abbey Lindsay; an act to provide for the payment of grand and petit jurors in the county of Jackson; an act to incorporate the trustees of the Wilcox society for the encouragement of literature; an act authorizing Wm Burns and Wm. W. Pruitt to continue their mill on Paint Rock river; an act to authorize Hector Garrett to emancipate a certain slave therein mentioned; an act to authorize the judge of the county court and commissioners of roads and revenue of Fayette county to levy an extra tax; an act supplementary to an act entitled an act to authorize the sheriff or coroner of the county of Shelby to sell lands and slaves levied on by execution at the town of Montevallo, passed at the present session of the Legislature; an act to incorporate the Athens male academy, in Limestone county; an act for the relief of Wm. May and James Reynolds; an act respecting bail; an act to authorize George W. Stoneroad to emancipate certain slaves therein mentioned; an act for the relief of Susannah Casey; an act to legalize registering certain deeds or conveyances of land in this state; joint memorial to the congress of the United States in favor of Col. David White; and an act to incorporate the Mobile marine railway and insurance company; were severally read the first time and ordered to a second reading to-morrow.

A message from the House of Representatives, by Mr Tunstall: Mr President, the House of Representative have passed a bill which originated in the House entitled an act to prolong the regular term of the circuit court of Mobile county, and for other purposes. In which they desire the concurrence of the Senate.

A bill from the House of Representatives entitled an act to prolong the regular

term, of the circuit court of Mobile county, and for other purposes, was read and ordered to a second reading to-morrow.

Mr Perry from the committee on the judiciary, to which was referred a bill to be entitled an act further to amend the attachment laws, reported the same without amendment. Ordered that the bill be engrossed, and made the order of the day for a third reading to-morrow.

Mr Powell introduced a bill to be entitled an act to increase the salary of the Quarter Master General; which was read and ordered to a second reading to-morrow.

An engrossed bill to be entitled an act to amend the several laws relative to roads, bridges and ferries, was read the third time. Mr Moore of J. moved that the further consideration of the bill be indefinitely postponed; which was carried.

Engrossed bills of the following titles, to-wit: an act approving and confirming the contract made by the Governors of the States of Mississippi and Alabama, in relation to the unsettled accounts between the two States; an act the better to secure the collection of the State revenue; an act to establish an Academy in Clarke county at Sugsville, and for other purposes; an act for the relief of Enoch Bryant; and an act prescribing the duties of Sheriffs and returning officers in holding elections, and returning the votes of all persons voting on the proposed amendments of the constitution of the State of Alabama, were severally read the third time and passed. Ordered that the titles of the bills be as aforesaid, and that they be sent to the House of Representatives for their concurrence.

A bill to be entitled an act extending the powers of the Judge of the county court and commissioners of roads and revenue of the county of Dallas, was read the second time and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act for the relief of Elijah Smith, tax collector of Franklin county, was read the second time and ordered to a third reading to-morrow.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Friday, January 16th, 1829.*

The Senate met pursuant to adjournment.

Mr Perry from the committee on the judiciary, to which was referred a bill to be entitled an act to reduce into one the several acts in relation to the manner of electing Electors of President and Vice President of the United States, and for other purposes, reported the same without amendment. Ordered that the bill lie on the table.

Mr Perry from the same committee to which was referred a resolution, instructing them to inquire into the expediency of giving a summary remedy against executors, administrators and guardians, reported a bill to be entitled an act giving a summary remedy against executors, administrators and guardians; which was read and ordered to a second reading to-morrow.

Mr Perry introduced a bill to be entitled an act to change the times of holding the fall terms of the courts in the second judicial circuit; which was read and ordered to a second reading to-morrow.

Mr Moore of J. introduced a joint memorial to the Congress of the United States, asking a postponement of the land sales in Jackson and Madison counties, and a change of the law regulating such sales, and to allow to occupants a pre-emption right; which was read the first and second time, and committed to a special committee consisting of Messrs Moore of J. Vining and Garth, to consider and report thereon.

Mr Watkins introduced a bill to be entitled an act for the relief of the officers of the Bank of the State of Alabama; which was read and ordered to second reading to-morrow.

Mr McVay offered the following resolutions: 1st *Resolved*, That the committee on inland navigation be instructed to inquire into the expediency and propriety of forthwith creating by law, a board of commissioners for the purpose of commencing the contemplated improvements to the navigation of the Tennessee river, so that if practicable, the same may be completed as high up the said river as the town of Florence, during the current year. 2d *Resolved further*, That the same committee examine into, and report upon the propriety of having the improvements to the navigation of the said river Tennessee, made by contracts with individuals, in such several lots or portions, as to secure the faithful and prompt performance of the same,

with due regard to economy, and the convenience and interest of the citizens; with leave to report by bill or otherwise, which was adopted.

Mr Ross introduced a bill to be entitled an act to repeal in part, and amend an act entitled an act concerning roads, highways, bridges and ferries, in the county of Mobile; which was read, and the rule requiring bills to be read on three several days being dispensed with, the bill was read the second time and ordered to be engrossed for a third reading to-morrow.

A message from the House of Representatives by Mr Tunstall: Mr President, The House of Representatives have passed bills which originated in the Senate of the following titles, to wit: an act for the relief of Sheriffs and other officers; an act to divorce Ambrose Sanders from his wife Elizabeth Sanders; and an act to amend the act incorporating the town of Florence. They have postponed until the first day of March next, the bill which originated in the Senate entitled an act more effectually to suppress the evil practice of duelling. They have passed bills which originated in the House of Representatives entitled an act to incorporate the Rising Sun Lodge of Free Masons No. 29, in the town of Decatur, Morgan county, and the Athens Lodge No. 16, in the town of Athens, in Limestone county; joint memorial to the Congress of the United States, asking relief for the purchasers of public lands, and for other purposes; an act to repeal in part, an act entitled an act to suppress the evil and pernicious practice of fire hunting, passed 12th, December, 1822; an act for the relief of Benjamin S. Brumley; an act for the relief of Jeremiah W. Thomas, tax collector of Lawrence county; and an act for the payment of Martin Wells. In all of which they desire the concurrence of the Senate.

Bills from the House of Representatives, entitled an act to incorporate the Rising Sun Lodge of Freemasons, No. 29, in the town of Decatur, Morgan county, and the Athens lodge, No. 16, in the town of Athens, in Limestone county; joint memorial to the Congress of the United States asking relief for the purchasers of public lands, and for other purposes; an act to repeal in part an act entitled an act to suppress the evil and pernicious practice of fire hunting, passed Dec. 12, 1822; an act for the relief of Benjamin S. Brumley; an act for the relief of Jeremiah W. Thomas, tax collector of Lawrence county; and an act for the payment of Martin Wells;—were severally read the first time and ordered to a second reading to-morrow.

A bill to be entitled an act to prolong the regular terms of the circuit courts of Mobile county, and for other purposes, was read the second time; and the rule requiring bills to be read on three several days being dispensed with, the bill was read the third time and passed. *Ordered*, that the secretary acquaint the House therewith.

Engrossed bills to be entitled an act extending the powers of the judge of the county court and commissioners of roads and revenue of the county of Dallas; and an act further to amend the attachment laws;—were severally read the third time and passed. *Ordered*, That the titles of the bills be as aforesaid, and that they be sent to the House of Representatives for their concurrence.

A bill to be entitled an act for the relief of Elijah Smith, tax collector of Franklin county, was read the third time and passed. *Ordered*, that the secretary acquaint the House of Representatives therewith.

Mr Hubbard, from the committee appointed to confer with the committee appointed by the House of Representatives, on the subject of the disagreement between the two Houses in relation to the amendments proposed by the House to the bill entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named, submitted the following Report:

The Joint Committee of the two Houses of the General Assembly of the state of Alabama, appointed to confer on the subject of difference between the two Houses respecting the amendments offered by the House of Representatives to the 4th, 5th, 11th and 14th sections of the bill entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named, beg leave to report to their respective Houses that the said committees respectfully recommend that the House of Representatives recede from their amendment to the 4th section of the bill, and concur in the amendment made by the Senate to the amendment of the House of Representatives to the end of the 5th section of the bill, which amendment provides that said commissioners shall take and subscribe an oath that they respectively “will not directly or indirectly purchase any of said lands, except the preemption right given to them, and that they will not in any manner be concerned in fixing the value upon their own preemption.” And that the House of Repre-

representatives also recede from their amendment to the 10th section of the bill; which amendment strikes from the said 10th section the words 'classed and'. They also respectfully recommend to their respective Houses as a modification of the 5th section of the bill the provision herewith submitted, to wit: strike out all after the enacting clause of the 5th section down to the word 'and,' in the 11th line of the original bill, and insert in lieu thereof the following: 'That the said lands shall be divided into three classes, and the lands of the first class shall not be valued at less than six dollars per acre; lands of the second class, not less than three nor more than six dollars per acre; lands of the third class not less than the minimum price of the lands of the United States nor more than three dollars per acre; and if the said commissioners shall be of opinion that any of the lands belonging to the second or third classes, on account of proximity to a town, the canal, or from other local causes, shall be worth more than the maximum prices herein above affixed to the second or third classes, then the said commissioners shall be authorized to assess the true value, and the prices so fixed shall be the prices at which the said lands are to be sold.' The said committee further respectfully recommend as a substitute for the 14th section the provision herewith submitted, to wit: 'Sec. 14. And be it further enacted, That none of the said relinquished lands within one mile of the north bank of the Tennessee river, from Coxe's ferry to Waterloo, shall be sold until so ordered by act of the General Assembly of the State of Alabama; and each and every person entitled by the provisions of this act to a preference in becoming the purchaser of any part of said lands hereby reserved from sale, shall be authorized to enter the like quantity of any other of said relinquished lands, not appropriated by other occupants, at the price at which the said lands are valued at by the commissioners appointed by virtue of the foregoing provisions of this act.' All of which is respectfully submitted. (Signed)

DAVID HUBBARD, Chairman of the committee on the part of the Senate.

On motion, *Ordered*, That the Senate concur in the report of the committee of conference, and that the House of Representatives be requested, in the event of their concurrence in said report, to appoint a committee whose duty it shall be, together with the committee of conference on the part of the Senate, to superintend the engrossment of the bill mentioned in the report. *Ordered*, That the secretary acquaint the House therewith.

Bills from the House of Representatives of the following titles, to wit: an act for the relief of Susannah Casey; an act to legalize the registering certain deeds or conveyances of land in this state; joint memorial to the Congress of the United States in favor of Col. David White; an act to authorize George W. Stoneroad to emancipate certain slaves therein named; an act to authorize Hector Garrett to emancipate certain slaves therein named; an act to repeal in \_\_\_\_\_ an act to locate the seat of justice for Fayette county, passed Jan. 12, 1826; an act to authorize Wm. Burns and Wm. W. Pruitt to continue their mill on Paintrock river; an act to authorize the judge of the county court and commissioners of roads and revenue of Fayette county to levy an extra tax; an act supplementary to an act entitled an act to authorize the sheriff or coroner of the county of Shelby to sell lands and slaves levied on by execution at the town of Montevallo, passed at the present session of the legislature; an act to incorporate the trustees of the Wilcox society for the encouragement of literature; and an act to incorporate the Athens male academy in the county of Limestone;—were severally read a second time and ordered to a third reading to-morrow.

A bill to be entitled an act for ascertaining the sense of the citizens of Dallas county with regard to the seat of justice in said county, was read the second time and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act respecting bail, was read the second time and referred to the committee on the judiciary, to consider and report thereon.

A bill to be entitled an act for the relief Wm. May and Jas. Reynolds, was read the second time and referred to a special committee, consisting of messrs. Perry, Ross and Evans.

A bill to be entitled an act to incorporate the Mobile marine railway and insurance company, was read the second time and referred to a special committee, consisting of messrs. Ross, Watkins and Perry, to consider and report thereon.

A bill to be entitled an act to divorce John Lindsay from his wife Abbey Lindsay, was read the second time and referred to the committee on divorce and alimony.

A bill to be entitled an act to provide for the payment of grand and petit jurors in the county of Jackson, was read the second time and ordered to lie on the table.

A bill to be entitled an act to amend an act entitled an act to establish and im-

prove a road therein mentioned, approved Jan. 13. 1828, and for other purposes, was read the second time and referred to a special committee, consisting of messrs. Evans, Walthall and Pickett, to consider and report thereon.

A bill to be entitled an act to increase the salary of the quartermaster general, was read the second time and ordered to be engrossed for a third reading to-morrow.

The following communication was received from the Governor, by Mr. Thompson :

EXECUTIVE DEPARTMENT, TUSCALOOSA, JANUARY 15, 1829.

The Hon. President and Members of the Senate :

Gentlemen—I have this moment received a letter from his excellency the Governor of the state of Georgia, with a report and resolutions adopted by the Legislature of that state, on the resolutions of the states of South Carolina and Ohio, which I have the pleasure to transmit to you without delay. I have the honor to be, most respectfully, your obedient servant

JOHN MURPHY

*Ordered*, that the communication, together with the accompanying documents, be referred to the committee on the judiciary.

Mr. Ross, moved that the Senate adjourn till to-morrow morning at 10 o'clock ; which was carried. Yeas 14—Nays 7.

The yeas and nays being desired, those who voted in the affirmative are, Mr. President, Abercrombie, Conner, Garth, Hubbard, Merriweather, Moore of J. Moore, of m. Perry, Powell, Ross, Vining, Walthall and Wells. — Those who voted in the negative are messrs Crawford, Evans, McVay, Pickett, Skinner, Smith and Watkins.

The Senate was accordingly adjourned.

*Saturday, January 17, 1829.*

The Senate met pursuant to adjournment.

Mr. Perry, from the committee on the judiciary to which was referred a resolution of the Senate instructing them to take and report to the Senate the testimony of such witnesses as might be offered by Wm. Kelly in support of the charges preferred by him against Judges Saffell, White and Crenshaw, and of such as might be offered by the Judges implicated, submitted the evidence taken by the committee in pursuance of the resolution ; which was ordered to lie on the table till Monday next.

Mr. Moore of m. from the committee on divorce and alimony to which was referred a bill to be entitled an act to divorce John Layman from his wife Rebecca Layman ; reported the same without amendment. *Ordered*, that the bill be made the order of the day for a third reading on Monday next.

Mr. Moore, from the same committee to which was referred a bill to be entitled an act to divorce John Lindsay from his wife Abby Lindsay reported the same without amendment. *Ordered*, that the bill be made the order of the day for a third reading on Monday next.

Mr. Moore of J. from the special committee to which was referred the joint memorial to the congress of the United States, asking a postponement of the land sales in Jackson and Madison counties ; and a change of the law regulating such sales, and to allow to occupants a preemption right, reported the same as amended ; which was concurred in. *Ordered*, that the memorial be engrossed and made the order of the day for a third reading on Monday next.

Mr. McVay offered the following resolution : *Resolved*, that the committee on accounts and claims be instructed to inquire into the expediency of making an appropriation for the payment of the several returning officers of this state for service rendered in making returns of the votes for electors of President and Vice-president of the United States at the late election ; which was adopted.

Mr. McVay presented the claim of the sheriff of Lauderdale county against the state ; which was referred to the committee on accounts and claims.

Mr. Watkins introduced a bill to be entitled an act to authorize the county court of Butler county to appropriate a certain sum of money therein specified ; which was read and ordered to a second reading on Monday next.

Mr. Powell, from the committee on schools and colleges and school and college lands to which was referred so much of the Governor's annual communication as relates to the university of the State of Alabama, asked to be discharged from the further consideration thereof ; which was agreed to.

Mr. Powell from the same committee to which was referred the message of his



Excellency the Governor, covering the petition of John Talbert, praying that he may be permitted to purchase at a stipulated price, fractional sections 34 and 27, in Township 7, Range 5, in the district of public lands offered for sale at Cahawba, belonging to the University. And also a resolution of the Senate instructing said committee "to inquire what lands are necessary to be retained for the University, and what lands of those retained from sale should now be sold," reported a bill to be entitled an act authorizing the sale of certain lands belonging to the University of the State of Alabama; which was read and ordered to a second reading on Monday next.

Mr Powell from the same committee to which was referred the communication from the Governor, of the 28th Nov. last, reported a bill to be entitled an act to provide for the settlement of a certain note executed by the late Governor Pickens to the Tombeckbe Bank, in behalf of the State; which was read and ordered to a second reading on Monday next.

Mr Powell from the same committee to which was referred the bill to be entitled an act to locate the University of the State of Alabama, at Davis's in Autauga county, reported that it is inexpedient to pass the bill. On motion of Mr Perry, ordered that the bill and report lie on the table.

Mr Powell from the same committee to which was referred the petition of sundry citizens of Township 2, Range 9, west in Lauderdale county, praying the passage of a law exempting Simeon Perry, Charles Mason and John Cain, from the payment of rent for the occupancy of the 16th section of the aforesaid Township, reported, that the prayer of the petitioners in the opinion of the committee, is unreasonable and ought not to be granted; which was concurred in.

Mr McVay offered the following resolution: *Resolved*, That the committee on accounts and claims, be instructed to incorporate in the general appropriation bill the sum of forty dollars for the payment of Henry Garrard, which has been allowed him this session of the Legislature, for fees and expenses incurred in defending a suit, as tax collector of Lauderdale county, in the case of George Boggs against him; which was adopted.

A message from the House of Representatives by Mr Tunstall: Mr President, The House of Representatives have appointed a committee on their part, consisting of Messrs Parsons, Fearn, Terry, Lewis of M. and Barton, to act with the committee, which may have, or shall be appointed on the part of the Senate, to superintend the enrolment of the bill entitled an act to enable the State of Alabama, to sell and dispose of certain lands therein named. They have passed bills which originated in the House of Representatives entitled an act to change the times of holding the courts of commissioners of roads and revenue in the county of Franklin; an act to provide for the support of Paupers in the county of Jefferson; and an act for the relief of Stith Evans, of the county of Greene. In all of which they desire the concurrence of the Senate.

A bill from the House of Representatives, entitled an act for the relief of Stith Evans of the county of Greene was read; and the rule requiring bills to be read on three several days being dispensed with, the bill was read the second time and referred to the committee on propositions and grievances, to consider and report thereon.

A bill to be entitled an act to provide for the support of Paupers in the county of Jefferson, was read; and the rule requiring bills to be read on three several days being dispensed with, the bill was read the second and third time forthwith and passed. *Ordered*, That the Secretary acquaint the House of Representatives therewith.

A bill to be entitled an act to change the times of holding the courts of commissioners of roads and revenue in the county of Franklin, was read and ordered to a second reading on Monday next.

Engrossed bills to be entitled an act to ascertain the sense of the citizens of Dallas county, with regard to the seat of justice of said county; and an act to repeal in part, and amend an act entitled an act concerning roads, highways, bridges and ferries, in the county of Mobile, approved, January 15, 1828; were severally read the third time and passed. *Ordered* that the titles be as aforesaid, and that they be sent to the House of Representatives for their concurrence.

An engrossed bill to be entitled an act to increase the salary of the Quarter Master General, was read the third time and amended by way of rider on Mr Merriwether's motion. Mr Perry moved to fill the blank in the bill with two hundred and fifty dollars, as the salary of the Quarter Master General; which was lost. Yeas 10—nays 10.

The yeas and nays being desired, those who voted in the affirmative are, Messrs Abercrombie, Conner, Garth, Hubbard, Moore of J. Perry, Powell, Ross, Vining and Wood.

Those who voted in the negative are, Messrs Crawford, Evans, McVay, Merriwether, Moore of M. Pickett, Skinner, Smith, Walthall and Watkins.

Mr Abercrombie moved to fill the blank with two hundred and twenty-five dollars; which was lost. Yeas 10—nays 10.

The yeas and nays being desired, those who voted in the affirmative are, Messrs Abercrombie, Conner, Garth, Hubbard, Moore of J. Perry, Powell, Ross, Vining and Wood.

Those who voted in the negative are, Messrs Crawford, Evans, McVay Merriwether, Moore of M. Pickett, Skinner, Smith, Walthall and Watkins.

Mr Ross moved to fill the blank with two hundred and twenty dollars; which was lost. Mr Watkins moved to fill the blank with two hundred dollars; which was carried. The question was then put, "shall the bill pass?" and determined in the affirmative. Ordered that the title of the bill be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

Mr Perry called up the engrossed bill to be entitled an act to compensate John Elliott, for services rendered the State. The motions heretofore made to fill the blank in the bill being reconsidered. Mr Perry moved to fill the blank, with one hundred dollars as a compensation to Mr Elliott for services rendered, in prosecuting a writ of quo warranto against the Tombeckbe Bank; which was lost. Yeas 4—nays 16.

The yeas and nays being desired, those who voted in the affirmative are, messrs. Abercrombie, Perry, Ross and Wood.—Those who voted in the negative are, Mr President, Conner, Crawford, Evans, Garth, Hubbard, McVay, Merriwether, Moore of J. Moore of m. Pickett, Powell, Skinner, Smith, Vining and Walthall.

Mr Perry then moved to fill the blank with seventy-five dollars; which was carried. Yeas 11—Nays 10.

The yeas and nays being desired, those who voted in the affirmative are Mr President, Abercrombie, Merriwether, Moore of J. Perry, Powell, Ross, Smith, Vining, Watkins and Wood.—Those who voted in the negative are, Messrs Conner, Crawford, Evans, Garth, Hubbard, McVay, Moore of M. Pickett, Skinner and Walthall. The bill was then passed. Ordered, that the title be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

Mr Smith called up the joint memorial to the Congress of the United States, asking an extension of the federal judiciary system to the western states. Ordered, that the memorial be engrossed and made the order of the day for a third reading on Monday next.

Mr Hubbard called up the joint memorial to the Congress of the United States, asking a modification of the act granting certain relinquished lands to the state of Alabama. Mr Hubbard moved to amend the memorial by adding the words "such toll as shall be sufficient to keep the work in repair," so as to request the Congress of the United States to modify the act in such manner as will authorize the state to collect a toll sufficient to keep the canal in repair; which was carried. Mr Garth having been called to the chair, Mr President moved to strike from the memorial the following words: "they respectfully request that your honorable body will so modify the grant as to cause an examination and survey to be made for the purpose of estimating the costs of a canal for steamboats, for tow or canal boats, or the costs of a rail road round the Muscle Shoals on the Tennessee river, and that the state of Alabama may be permitted to adopt whichever mode of improvement may be found to be most beneficial to the state;" which was lost. Yeas 8—Nays 12.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Conner, Garth, McVay, Moore of J. Powell, Ross and Vining.—Those

who voted in the negative are, messrs. Abercrombie, Crawford, Evans, Hubbard, Merriwether, Moore of m. Perry, Pickett, Skinner, Smith, Walthall and Watkins.

*Ordered*, That the memorial be engrossed and made the order of the day for a third reading on Monday next.

Mr Hubbard called up the bill to be entitled an act to improve the navigation of the Tennessee river. The bill having been read the second time, Mr McVay moved that it be committed to the committee on inland navigation; which was lost. Mr Hubbard moved that the bill lie on the table till the first day of the next session of the General Assembly; which was carried.

And then the Senate adjourned till 2 o'clock this evening.

*Two o'clock P.M. January 17, 1829*—The Senate met pursuant to adjournment.

A message from the House of Representatives, by Mr Tunstall: Mr President, The House of Representatives have adopted the following resolution, in which they desire your concurrence: *Resolved* That the Senate be now invited to assemble in the Representative Hall for the purpose of going into the several elections contemplated by a previous resolution of the two Houses, and that the east end of the hall be assigned for their reception. Whereupon the members of the Senate repaired to the hall of the House of Representatives, and having taken their seats, Mr President arose and announced the object of the meeting.

When the two Houses proceeded to the election of a President of the Bank of the State of Alabama. Dr. Thomas Casey, John L. Tindall and James H. Dearing being in nomination. The votes stood thus: For Thomas Casey 37—John L. Tindall 30—James H. Dearing 24.

Those who voted for Dr Casey are, messrs Crawford, Evans, Hubbard, McVay, Merriwether, Moore of m. Pickett, Skinner, Smith, Walthall and Watkins of the Senate; Mr Adams, Anderson, Belser, Brandon, Bridges, Clark, Clough, Cole, Coopwood, Dale Duke, Foster, Hodges, Hudson, Lewis of F. Metcalfe, Mims, Musgrove, Pickens, Richardson, Robison, Salter, Sanders, Walker of D. Watts and Weissinger.

Those who voted for m. Tindall are, Messrs Abercrombie, Conner, Garth, Moore of J. Perry, Powell and Wood of the Senate; mr Banks, Brown, Colgin, Cook, Dupuy, Durrett, Edmondson, Gage, Hill, Lawler, Lea, Maris, Massey, McElderry, Parker, Rogers, Russell, Smith of J. Tarver, Townsend of P. Walker of m. Wellborne and Whitfield.

Those who voted for mr Dearing are, mr President, Ross and Vining of the Senate; mr Speaker, Ambrister, Barker, Barton, Bibb of L. Bibb of m. Bonnell, Fearn, Flournoy, George, Harris, Lane, Lewis of m. Mobley, Parsons, Penn, Perkins, Smith of L. Sykes, Terry and Townsend of m.

Neither of the persons in nomination having received a majority of the whole number of votes, the two Houses proceeded to vote a second time for President of the Bank of the State of Alabama the name of mr Dearing being withdrawn. The votes stood thus: For Dr Casey 33—Dr Tindall 53.

Those who voted for Dr Casey are, mr Crawford, Evans, Hubbard, McVay, Merriwether, Moore of M. Pickett, Skinner, Smith, Walthall and Watkins of the Senate; messrs Adams, Anderson, Belser, Brandon, Bridges, Clark, Clough, Cole, Coopwood, Dale Duke, Foster, Gage, Hodges, Hudson, Lewis of F. Metcalfe, Mims, Musgrove, Pickens, Richardson, Robison, Salter, Sanders, Walker of D. Watts and Weissinger.

Those who voted for John L. Tindall are, mr President, Abercrombie, Conner, Garth, Moore of J. Perry, Powell, Ross, Vining and Wood of the Senate; Mr Speaker, Ambrister, Banks, Barker, Barton, Bibb of L. Bibb of M. Bonnell, Brown, Colgin, Cook, Dupuy, Durrett, Edmondson, Fearn, Flournoy, George, Harris, Hill, Lane, Lawler, Lea, Lewis of m. Mandis, Massey, Mobley, McElderry, Parker, Parsons, Penn, Perkins, Rogers, Russell, Smith of J. Smith of L. Sykes, Tarver, Terry, Townsend of m. Townsend of P. Walker of m. Wellborne and Whitfield.

John L. Tindall having received a majority of all the votes, was declared by mr Speaker to be duly elected President of the Bank of the state of Alabama for one year next ensuing the date hereof.

The two Houses then proceeded to elect twelve Directors of the Bank of the state of Alabama. Wm. G. Parish, Wm. R. Colgin, John H. Somerville, Samuel B. Ewing, Constantine Perkins, Thomas Owen, James H. Dearing, James Guild, Henry A. Snow, William H. Jack, Nathan Hughes, John B. Pass, Thomas R. Belling, Peter Donaldson, Ira Griffin, Robert E. Baylo, Amand Pfister, A. P. Baldwin, Samuel Meek, Alfred Butler, John O. Cammings, Dennis Dent and John B. Hogan being in nomination. The votes stood thus: For mr Perkins 87 votes—mr Ewing 84—mr Dearing 77—mr Colgin 76—mr Bohling 72—mr Owen 71—mr Parish 64—mr Somerville 64—mr Guild 56—mr

Shaw 56—mr Jack 51—mr Baylor 50—mr Griffin 43—mr Hughes 37—mr Pass 36—mr Donaldson 16—mr Mack 32—mr Guinn 22—mr Battle 17—mr Hogan 15—mr Baldwin 13—mr Pfister 7—mr Dent 4.

Those who voted for mr Perkins are, mr President, Abercrombie, Conner, Crawford Evans, Garth, Hubbard, McVay, Merriwether, Moore of J. Moore of m. Perry, Pickett Powell, Ross, Skinner, Smith, Vining, Walthall, Watkins and Wood of the senate; mr Speaker, Adams, Ambrister, Anderson, Banks, Barker, Barton, Belser, Bibb of L. Bibb of m. Bonnell, Brandon, Bridges, Brown, Clark, Clough, Cole, Colgin, Cook, Coopwood Dale, Duke, Dupuy, Durrett, Edmondson, Fearn, Foster, Gage, George, Harris, Hodges, Hudson, Lane, Lawler, Lea, Lewis of F. Lewis of m. Mardis, Massey, Metcalfe, Mims, Mobley, Musgrove, McElderry, Parker, Parsons, Penn, Perkins, Pickett, Richards, Richardson, Robinson, Rogers, Russell, Sanders, Smith of J. Smith of L. Sykes, Tarver, Terry, Townsend of m. Townsend of P. Walker of D. Walker of m. Wallis, Weissinger and Wellborne.

Those who voted for mr Ewing are, mr President, Abercrombie, Conner, Crawford Evans, Garth, Hubbard, McVay, Moore of J. Moore of m. Perry, Pickett, Ross, Skinner, Smith, Vining, Walthall and Watkins of the senate; mr Speaker, Adams, Ambrister, Anderson, Banks, Barker, Barton, Belser, Bibb of L. Bibb of m. Bonnell, Brandon, Bridges, Brown, Clark, Clough, Cole, Colgin, Cook, Coopwood, Dale, Duke, Dupuy, Durrett, Edmondson, Fearn, Flournoy, Foster, Gage, George, Harris, Hodges, Hudson, Lane, Lawler, Lea, Lewis of F. Lewis of m. Mardis, Metcalfe, Mims, Mobley, Musgrove, McElderry, Parker, Parsons, Penn, Perkins, Pickett, Richards, Richardson, Robinson, Rogers, Russell, Sanders, Smith of J. Smith of L. Sykes, Tarver, Townsend of m. Townsend of P. Walker of D. Walker of m. Wallis, Weissinger, Wellborne and Whitfield.

Those who voted for mr Dealing are, mr President, Abercrombie, Conner, Crawford Evans, Garth, Hubbard, McVay, Merriwether, Moore of J. Moore of m. Perry, Pickett Powell, Ross, Skinner, Smith, Vining, Walthall, Watkins and Wood of the senate; mr Speaker, Adams, Ambrister, Anderson, Banks, Barker, Barton, Belser, Bibb of L. Bibb of m. Bonnell, Bridges, Brown, Cole, Colgin, Cook, Coopwood, Dale, Duke, Dupuy, Durrett, Edmondson, Fearn, Flournoy, Foster, George, Harris, Hodges, Hudson, Lane, Lawler, Lea, Mardis, Massey, Metcalfe, Mobley, Musgrove, McElderry, Parker, Parsons, Penn, Richardson, Robinson, Rogers, Russell, Sanders, Smith of J. Smith of L. Sykes, Tarver, Terry, Townsend of m. Townsend of P. Wallis, Weissinger, Wellborne and Whitfield.

Those who voted for mr Colgin are, mr President, Conner, Evans, Garth, McVay, Merriwether, Moore of J. Perry, Pickett, Powell, Ross, Skinner, Smith, Vining, Walthall, Watkins and Wood of the senate; mr Speaker, Adams, Ambrister, Anderson, Banks, Barker, Barton, Belser, Bibb of L. Bibb of m. Bonnell, Brandon, Bridges, Brown, Clark, Clough, Cole, Colgin, Cook, Coopwood, Dale, Durrett, Edmondson, Fearn, Flournoy, Foster, Gage, George, Harris, Hodges, Hudson, Lane, Lawler, Lea, Mardis, Massey, Metcalfe, Mobley, Musgrove, McElderry, Parsons, Penn, Perkins, Richardson, Robinson, Rogers, Russell, Sanders, Smith of J. Smith of L. Sykes, Tarver, Terry, Townsend of m. Townsend of P. Walker of m. Wallis, Weissinger, Wellborne and Whitfield.

Those who voted for mr Bolling are, President, Abercrombie, Conner, Crawford Garth, Hubbard, McVay, Moore of m. Perry, Ross, Skinner, Smith, Vining, Walthall, Watkins and Wood of the senate; mr Speaker, Adams, Ambrister, Anderson, Banks, Barker, Barton, Belser, Bibb of L. Bibb of m. Bonnell, Brandon, Brown, Clough, Cole, Colgin, Cook, Dale, Durrett, Edmondson, Fearn, Flournoy, Foster, Gage, George, Harris, Hodges, Hudson, Lane, Lawler, Lea, Lewis of m. Mardis, Mims, Mobley, Musgrove, McElderry, Parker, Parsons, Penn, Perkins, Richardson, Robinson, Rogers, Russell, Sanders, Smith of J. Smith of L. Tarver, Terry, Townsend of m. Walker of D. Walker of m. Wallis and Whitfield.

Those who voted for mr Owen are, mr President, Abercrombie, Conner, Crawford Evans, Garth, Hubbard, McVay, Merriwether, Moore of J. Moore of m. Pickett, Powell, Ross, Skinner, Smith, Vining, Walthall and Watkins of the senate; mr Speaker, Adams, Ambrister, Banks, Barker, Barton, Bibb of L. Bibb of m. Bonnell, Brandon, Bridges, Brown, Clark, Cole, Colgin, Cook, Coopwood, Dale, Duke, Dupuy, Durrett, Edmondson, Fearn, Flournoy, Foster, George, Harris, Hodges, Lawler, Lewis of F. Lewis of m. Mardis, Massey, Metcalfe, Musgrove, McElderry, Parker, Parsons, Pickett, Richards, Richardson, Robinson, Rogers, Russell, Sanders, Smith of L. Sykes, Terry, Walker of m. Wallis, Weissinger, Wellborne and Whitfield.

Those who voted for mr Parish are, mr President, Conner, Crawford, Evans, Garth, Hubbard, McVay, Merriwether, Moore of J. Moore of m. Perry, Pickett, Powell, Ross, Skinner, Smith, Vining, Walthall and Watkins of the senate; mr Speaker, Adams, Ambrister, Barker, Barton, Belser, Bibb of m. Brandon, Bridges, Brown, Clark, Clough, Cole, Colgin, Coopwood, Dale, Duke, Dupuy, Edmondson, Fearn, Foster, Hodges, Hudson, Lawler, Lewis of F. Lewis of m. Massey, McElderry, Parsons, Penn, Pickett,

Richardson, Robison, Sanders, Smith of L. Sykes, Terry, Townsend of P. Walker of D. Walker of m. Wallis, Weissinger, Wellborne and Whitfield.

Those who voted for Mr Somerville are, Mr President Abercrombie Conner Evans Garth Merriwether, Moore of J. Moore of m. Perry, Pickett, Powell, Ross, Vining, Walthall Watkins and Wood of the senate; Mr Speaker Adams Ambrister Anderson Banks Barton Belser Bonnell Clough Cole Colgin Cook Coopwood Dale Duke Dupuy Durrett Edmondson Fearn Gage George Harris Hodges Hudson Lane Lawler Lea Lewis of F. Mardis Metcalfe Mims Mobley Musgrove McElderry Parsons Penn Perkins Robison Rogers Russell Smith of J. Smith of L. Sykes Tarver Terry Townsend of P. Walker of D. and Wallis.

Those who voted for Mr Guild are, Mr President Crawford Evans Garth Hubbard Merriwether Moore of J. Moore of m. Pickett Powell Skinner Smith Vining and Watkins of the senate; Mr Banks Barker Barton Bibb of L. Bibb of m. Brandon Bridges Clark Cole Colgin Cook Dale Durrett Edmondson Fearn Flournoy Foster Gage Hudson Lane Lewis of F. Mardis Mims McElderry Parker Parsons Penn Perkins Pickens Richardson Russell Smith of L. Sykes Tarver Terry Walker of D. Walker of m. Wallis Weissinger Wellborne and Whitfield.

Those who voted for Mr Snow are, Mr President Abercrombie Crawford Conner Evans Garth Hubbard McVay Merriwether Moore of J. Moore of m. Pickett Powell Ross Vining and Wood of the senate; Mr Speaker Anderson Barker Barton Bibb of L. Bridges Brown Clark Colgin Coopwood Dale Duke Dupuy Durrett Edmondson Fearn Flournoy Foster Gage Harris Hodges Lane Lawler Lewis of m. Mardis Massey Metcalfe McElderry Parker Parsons Penn Perkins Richardson Russell Smith of L. Tarver Terry Townsend of m. Wallis and Wellborne.

Those who voted for Mr Jack are, messrs Abercrombie Crawford Hubbard Perry Smith Watkins and Wood of the senate; Mr Speaker Adams Anderson Banks Barton Barker Belser, Bibb of L. Bibb of m. Bonnell Brandon Brown Clark Clough Cole Cook Duke Dupuy Fearn Gage George Lea Lewis of F. Lewis of m. Mardis Massey Metcalfe Mims Musgrove Parsons Penn Perkins Pickens Rogers Russell Sanders Tarver Terry Townsend of P. Walker of D. Walker of m. Weissinger Wellborne and Whitfield.

Those who voted for Mr Baylon are, messrs Crawford Hubbard Perry Pickett Skinner Smith Walthall and Wood of the senate; messrs Adams Anderson Belser Bridges Clark Clough Cole Colgin Coopwood Dale Duke Durrett Fearn Flournoy Foster Gage George Hodges Hudson Lane Lewis of F. Mardis Massey Metcalfe Mims Mobley Musgrove Parker Parson Penn Perkins Richardson Robison Sanders Smith of J. Smith of L. Townsend of P. Walker of D. Walker of m. Wallis Weissinger Wellborne and Whitfield.

Those who voted for Mr Griffin are, Mr President Conner Garth, McVay Merriwether Moore of J. Perry Powell Ross and Wood of the senate; Mr Speaker Adams Anderson Barton Belser Bibb of L. Brandon Bridges Brown Clark Clough Cook Dupuy Flournoy Foster Gage George Hudson Lane Lewis of m. Massey Mims McElderry Parker Pickens Russell Smith of J. Smith of L. Tarver Townsend of m. Townsend of P. Walker of D. and Walker of m.

Those who voted for Mr Hughes are, Mr President Abercrombie Conner Evans Hubbard McVay Moore of m. Perry Ross and Wood of the senate; Barker Belser Bibb of L. Bonnell Brown Clough Cook Duke Dupuy George Lane Lewis of F. Lewis of m. Massey Metcalfe Mims Mobley Musgrove Penn Robison Rogers Sanders Smith of J. Sykes Tarver Townsend of m. and Townsend of P.

Those who voted for Mr Pass are, messrs Abercrombie and McVay of the senate; Mr Adams Ambrister Banks Belser Bonnell Brandon Clough Dale Duke Dupuy Durrett Gage Harris Hudson Lane Lea Lewis of F. Lewis of m. Massey Metcalfe Mims Mobley Musgrove Parker Perkins Pickens Rogers Tarver Townsend of m. Townsend of P. Walker of D. Walker of m. Wallis and Whitfield.

Those who voted for Mr Donaldson are, messrs Abercrombie Conner Crawford Garth McVay Moore of J. Moore of m. Perry Pickett Skinner Smith Vining Watkins and Wood of the senate; Mr Speaker Adams Ambrister Anderson Banks Bibb of L. Bibb of m. Brandon Bridges Cole Colgin Flournoy Foster Gage Lea Lewis of m. McElderry Parker Robison Rogers Smith of J. Sykes Weissinger and Wellborne.

Those who voted for Mr Meek are, messrs Crawford Evans Merriwether Powell Skinner Walthall and Watkins of the senate; Mr Ambrister Anderson Banks Barker Bibb of m. Brandon Bridges Cole Colgin Flournoy Foster Gage Lea Mobley Musgrove Pickens Robison Rogers Sanders Smith of J. Sykes Townsend of P. Walker of m. Weissinger and Whitfield.

Those who voted for Mr Cummins are, Mr Walthall of the senate; messrs Ambrister Anderson Brandon Clark Coopwood Dupuy Edmondson Harris Hodges Lawler Mims Parker Perkins Pickens Sanders Smith of J. Terry Townsend of P. Walker of m. Wellborne and Whitfield.

Those who voted for Mr Battle are, messrs Merriwether, Pickett, Powell, Ross and Walthall of the senate; Mr Bibb of Mr. Bridges, Coopwood, Edmondson, Lawler, Mobley, Perkins, Richardson, Sykes, Terry, Townsend of Mr. and Weissinger.

Those who voted for Mr Hogan are, messrs Evans, Hubbard, Skinner, Smith and Wood of the senate; Mr Adams, Belser, Coopwood, Harris, Hodges, Hudson, Lewis of F. Mims, Pickens and Walker of D.

Those who voted for Mr Baldwin are, messrs Moore of J. Moore of Mr. and Vining of the senate; Mr Bonnell, Cook, Duke, Dupuy, Lawler, Lewis of F. Mardis, Metcalfe, Perkins and Richardson.

Those who voted for Mr Pfister are, Mr Abercrombie of the senate; messrs Bonnell, Flournoy, Lane, Lewis of Mr. Townsend of Mr. and Walker of D.

Those who voted for Mr Dent are, messrs Merriwether and Powell of the senate; Mr Clark and Mobley.

Constantine Perkins, Samuel B. Ewing, James H. Dearing, William R. Colgin, Thomas R. Bolling, Thomas Owen, William G. Parish, John H. Somerville, James Guild, Henry A. Snow, William H. Jack and Robert E. B. Baylor having received a majority of votes, were declared by Mr Speaker to be duly elected Directors of the Bank of the State of Alabama.

The two houses then proceeded to the election of a State Printer. Thomas B. Grantland, Wesley W. McGuire, and Caruthers & McFarlane being in nomination. The vote stood thus: For Mr Grantland 7—McGuire 50—Caruthers & McFarlane 34.

Those who voted for Mr Grantland are, messrs Powell and Vining of the senate; Mr Banks, Lewis of M. Parker, Terry and Whitfield.

Those who voted for Mr McGuire are, messrs Abercrombie, Conner, Crawford, Evans, Hubbard, Merriwether, Moore of M. Perry, Pickett, Ross, Skinner, Smith and Walthall of the senate; Mr Adams, Belser, Bonnell, Bridges, Clark, Cough, Cole, Colgin, Cook, Coopwood, Dale, Duke, Dupuy, Durrett, Gage, Harris, Hill, Hodges, Hudson, Lane, Lawler, Lea, Lewis of F. Mardis, Massey, Metcalfe, Mims, Parsons, Pickens, Richardson, Robison, Satter, Tarver, Townsend of M. Townsend of P. Walker of D. and Weissinger.

Those who voted for messrs Caruthers & McFarlane are, Mr President, Garth, McVay, Moore of J. Watkins and Wood of the senate; Mr Speaker, Ambrister, Anderson, Banks, Barton, Bibb of L. Bibb of M. Brandon, Brown, Edmondson, Fearn, Flournoy, Foster, George, Mobley, Musgrave, McElderry, Penn, Perkins, Rogers, Russell, Sanders, Smith of J. Smith of L. Sykes, Walker of M. Wallis and Wellborne.

Wesley W. McGuire having received a majority of the whole number of votes, was declared by Mr Speaker to be duly elected State Printer.

The two houses then proceeded to the election of a Warden for the port of Mobile, to supply the vacancy occasioned by the resignation of Philip McLoskey, Esq. Daniel Fowler, jr. alone being in nomination. For Mr Fowler 74 votes.

Those who voted for Mr Fowler are, President Abercrombie, Conner, Crawford, Garth, Hubbard, McVay, Merriwether, Moore of J. Moore of Mr. Perry, Pickett, Powell, Ross, Skinner, Smith, Vining, Walthall and Watkins of the senate; Mr Speaker, Adams, Ambrister, Anderson, Banks, Parker, Barton, Bibb of L. Bonnell, Brandon, Bridges, Clark, Cole, Colgin, Dale, Duke, Dupuy, Durrett, Edmondson, Fearn, Flournoy, Foster, Gage, George, Harris, Hodges, Hudson, Lane, Lawler, Lea, Lewis of F. Lewis of M. Mardis, Mims, Mobley, Musgrove, McElderry, Parker, Parsons, Penn, Pickens, Richardson, Robison, Sanders, Smith of L. Smith of J. Sykes, Tarver, Terry, Townsend of M. Townsend of P. Walker of D. Walker of Mr. Wallis and Weissinger.

Daniel Fowler, jr. having received all the votes present, was declared by Mr Speaker to be duly elected a warden for the port of Mobile, to fill the vacancy caused by the resignation of Philip McLoskey, Esq.

The elections being completed the Senate withdrew, returned to their own chamber and Mr President resumed the chair. When on motion the Senate adjourned till Monday morning at 10 o'clock.

*Monday, January 19th, 1829.*

The Senate met pursuant to adjournment.

Mr Vining from the committee on accounts and claims, to which was referred the account of Josiah Q. Guild, and that of Charles Steele, of the county of Mobile, reported that the committee had instructed him to ask to be discharged from the further consideration of the same; which was agreed to. Ordered that Mr Guild and Mr Steele have leave to withdraw their accounts.

Mr Vining from the same committee to which was referred the account of J. P. Weatherly, of Lauderdale county, reported that the committee had instructed him to ask to be discharged from the further consideration of the same; which was agreed to. Ordered that Mr Weatherly, have leave to withdraw his account.

Mr Powell presented the petition of Maricaduke Williams, asking further compensation for his services as one of the commissioners to adjust the unsettled accounts between this State and Mississippi; which was referred to the committee on propositions and grievances.

Mr Powell from the committee on schools and colleges and school and college lands, to which was referred a resolution of the Senate, requiring that committee to ascertain, and report a statement, shewing the several contracts entered into by the board of Trustees of the University of Alabama, for the erection of the buildings thereof, and a description of, and progress made in the erection of said buildings, reported, that inasmuch as the information called for, by said resolution, is contained in the last annual report of the Trustees of the University now before the Senate, a further report on the subject would be unnecessary, and therefore ask to be discharged from the further consideration thereof; which was agreed to.

Mr Moore of J. from the joint committee on enrolled bills, reported as correctly enrolled an act to authorize guardians to bring the slaves of their wards into this State without restriction; an act for the relief of Henry Linton; an act to repeal a certain act therein named; an act authorizing the draining of certain ponds in the county of Madison; an act to divorce Ambrose Sanders from his wife Elizabeth Sanders; an act to amend in part the 4th section of an act, passed at the last General Assembly, appointing commissioners for Dale county, and for other purposes; an act to change the times of holding the county courts for Franklin county; an act to amend the act incorporating the town of Florence; an act for the relief of Sheriffs and other officers; an act to alter and amend an act to establish a permanent road from Florence in the county of Lauderdale, to Athens in the county of Limestone; and a joint memorial to the Congress of the United States, in behalf of Solly Halton and William Merrell; all of which were accordingly signed by Mr President.

Mr Vining from the committee on accounts and claims, to which was referred the account of the Sheriff of Marengo county against the State, reported that the committee had instructed him to ask to be discharged from the further consideration of the same; which was agreed to.

Mr Ross from the special committee to which was referred the bill entitled an act to incorporate the Mobile Marine Railway and Insurance Company reported the same as amended; which was concurred in. Ordered that the bill be made the order of the day for a third reading to-morrow.

Mr Pickett asked, and obtained leave to withdraw certain memorials presented by him, in relation to the seat of justice in Autauga county.

Mr Perry called up the testimony taken and reported by the committee on the judiciary, in relation to the charges preferred by William Kelly, Esq against Judges S. Bold, White and Crenshaw. The testimony having been read, Mr Garth moved that it be again laid on the table till to-morrow and that the Senate proceed to-morrow at the hour of 10 o'clock A. M. to the investigation of the charges preferred against the Judges, by William Kelly. Mr Hubbard moved to amend the motion, by adding the words "and that Mr Kelly be heard within the Bar of the Senate in support of the charges, and that the Judges implicated be heard in their defence, either by themselves or counsel, if either the accuser or accused should thus desire to be heard;" which was carried. The question was then put on Mr Garth's motion as amended and carried.

A bill to be entitled an act to legalize registering certain deeds or conveyances of land in this State; and an act for the relief of Susannah Casey, were severally read the third time and passed. Ordered that the Secretary acquaint the House of Representatives therewith.

A message from the Governor, by Mr Thornton: Mr President, I am instructed by the Governor to inform your Honorable body, that he did, on the 15th inst. approve and sign an act to incorporate Valley Creek Academy, in the county of Dallas; and on the 16th inst. an act to amend an act passed at the last session of the General Assembly, authorizing a Lottery in Henry county, and for other purposes; an act for the relief of Joseph Bates, tax collector of Mobile county; an act authorizing the liberation of certain slaves; and an act to authorize Zachariah Holley to emancipate a certain slave therein named—all of which originated in the Senate.

Mr Powell moved to reconsider the vote of the Senate on Mr Hubbard's motion to permit Wm. Kely to be heard within the bar of the Senate in support of the charges preferred by him against Judges Saffold, White and Crenshaw, and to permit the Judges to be heard in their defence either by themselves or counsel; which was lost. Yeas 9—Nays 11.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Perry, Pickett, Powell, Ross, Vining, Walldhall and Watkins.

Those who voted in the negative are, messrs. Conner, Crawford, Evans, Garth, H. Hunt, McVay, Merriwether, Moore of J. Moore of Mr. Skinner and Smith.

And then the Senate adjourned till 3 o'clock this evening.

*Evening Session*—Bills from the House of Representatives, entitled an act to repeal in part an act to locate the seat of justice for Fayette county, passed Jan. 12th, 1826; an act to authorize George W. Stogeroad to emancipate certain slaves therein mentioned; an act to authorize Hector Garrett to emancipate certain slaves therein mentioned; joint memorial to the Congress of the United States in favor of Col. David White; an act to authorize Wm. Burns and Wm. W. Prewitt, to continue their mill on Paintrock river; an act to authorize the judge of the county court and commissioners of roads and revenue of Fayette county to levy an extra tax; an act supplementary to an act entitled an act to authorize the sheriff or coroner of the county of Shelby to sell lands and slaves levied on by execution at the town of Montevallo, passed at the present session of the Legislature; an act to incorporate the Wilcox society for the encouragement of literature; and an act to incorporate the Athens male academy in Limestone county; were severally read the third time and passed. *Ordered*, that the secretary acquaint the House of Representatives therewith.

A bill to be entitled an act to change the times of holding the fall term of the courts of the second judicial circuit, was read the second time and referred to the committee on the judiciary.

A bill to be entitled an act for the relief of the officers of the bank of the state of Alabama, was read the second time and referred to the committee on the bank.

A bill to be entitled an act giving a summary remedy against executors, administrators and guardians; an act to authorize the county court of Butler county to appropriate a sum of money therein specified; and an act authorizing the sale of certain lands belonging to the university of the state of Alabama; were severally read the second time and ordered to be engrossed for a third reading to-morrow.

A bill to be entitled an act for the payment of Martin Wells; joint memorial to the Congress of the United States, asking relief for the purchasers of public lands and for other purposes; an act for the relief of Benjamin S. Brunley; and, an act for the relief of Jeremiah W. Thomas, tax collector of Lawrence county;—were severally read the second time and ordered to a third reading to-morrow.

A bill to be entitled an act to incorporate the Rising Sun Lodge of Freemasons, No. 29, in Decatur, Morgan county, and the Athens Lodge, No. 16, in the town of Athens, Limestone county, was read the second time; and the rule requiring bills to be read on three several days being dispensed with, the bill was read the third time and ordered to lie on the table.

A bill to be entitled an act to repeal in part an act entitled an act to suppress the evil and pernicious practice of firehunting, passed Dec. 12, 1822, was read the second time and referred to a special committee, consisting of messrs. Powell, Watkins and Evans.

Engrossed joint memorial to the Congress of the United States asking a postponement of the land sales in Jackson and Madison counties, and a change of the law regulating such sales and to allow to occupants a preemption right; was read the third time and passed. *Ordered*, that the memorial be conveyed to the House of Representatives for their concurrence.

Engrossed joint memorial to the Congress of the United States requesting a modification of the act of Congress, passed the 23d May, 1828, entitled an act to grant certain relinquished and unappropriated lands to the state of Alabama for the purpose of improving the navigation of the Tennessee, Coosa, Chawhin and Black Warrior rivers, was read the third time, and the question being put, shall the memorial pass? it was determined in the affirmative. Yeas 11—Nays 9.



The yeas and nays being desired, those who voted in the affirmative are, Messrs Crawford, Evans, Hubbard, Merriwether, Moore of m. Perry, Pickett, Skinner, Smith, Walthall and Watkins. — Those who voted in the negative are, Mr President, Abercrombie, Conner, Garth, McVay, Moore of J. Powell, Ross and Vining.

*Ordered*, that the memorial be sent to the House for their concurrence.

A bill to be entitled an act to divorce John Layman from his wife Rebecca Layman; and an act to divorce John Lindsay from his wife Abbey Lindsay; were severally read the third time and passed by the requisite majority. *Ordered*, that the Secretary acquaint the House of Representatives therewith.

A bill to be entitled an act to change the times of holding the courts of commissioners of roads and revenue in the county of Franklin, was read the second time, amended on Mr Skinner's motion, and ordered to a third reading to-morrow.

A bill to be entitled an act to provide for the settlement of a certain note executed by the late Governor Pickens to the Tombeckbe Bank in behalf of the state, was read the second time, and the question being put, 'shall the bill be engrossed for a third reading?' it was determined in the negative. Yeas 8—Nays 8.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Crawford, Merriwether, Moore of m. Powell, Ross, Vining and Watkins.

Those who voted in the negative are, Messrs Evans, Garth, Hubbard, McVay, Perry, Skinner, Smith and Walthall.

Mr Perry from the committee on the judiciary to which was referred a bill to be entitled an act to change the times of holding the fall terms of the courts in the second judicial circuit, reported the same without amendment. The rule requiring bills to be read on three several days being dispensed with, the bill was read the third time and passed. *Ordered* that the title of the bill be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

Engrossed joint memorial to the Congress of the United States, asking an extension of the circuit court system of the federal judiciary to the western and south-western States of the Union, was read the third time and passed. *Ordered* that it be conveyed to the House of Representatives for their concurrence.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Tuesday, January 20th, 1829.*

The Senate met pursuant to adjournment.

Mr Perry from the committee on the judiciary, submitted the following report: The judiciary committee to whom was referred the charges of William Kelly, Esq. against the official conduct of Judges White, Saffold and Crenshaw, together with the answers of the Judges, having heretofore reported to the Senate, the testimony of all the witnesses offered by either party, respectfully ask leave to be discharged from the further consideration of the subject; which was agreed to.

Mr Hubbard from the joint committee appointed to superintend the enrolment of the bill, to be entitled an act to enable the State of Alabama to sell and dispose of certain lands therein named, reported that the committee had performed that duty, and that the bill had been correctly enrolled.

Mr President presented to the Senate the following communication from Judges Saffold, White and Crenshaw:

To the Hon. the President and Members of the Senate of the State of Alabama.

The undersigned Judges implicated in the charges laid before the Hon. Senate, by Wm. Kelly, respectfully represent: That understanding the Senate have passed a resolution, allowing the counsel of the undersigned and Mr Kelly a seat within the Bar of the Senate, with the privilege of arguing the questions arising out of said charges, the answers of the undersigned and the evidence submitted, they presume said resolution was mildly intended to afford the undersigned their constitutional privilege of being heard in their defence. They therefore, take the liberty of informing the Senate, that as the charges are not verified by affidavit, are denied by the answers of the undersigned, and not supported by proof, but on the contrary, are as they conceive, fully disproven, they do not think it necessary, or wish to avail themselves of their privilege of being heard by counsel, unless the indulgence which may be granted to Mr Kelly, and the course pursued by him, should render it necessary.

(Signed)

*R. Saffold, John White, A. Crenshaw.*

*Resolved*, 20th January, 1829.

*Ordered.* That the communication lie on the table.

Mr McVay from the committee on propositions and grievances, to which was referred the bill entitled an act for the relief of Sixth Evans of the county of Greene, reported the same without amendment. Ordered that the bill be made the order of the day for a third reading on to-morrow.

Mr Pickett offered the following preamble and resolution: Whereas, Judges Saffold, Crenshaw and White, charged with improper conduct in their official duties by William Kelly, Esq. waive the privilege secured to them by the constitution of submitting any arguments, and have expressed a willingness to submit the same to the consideration of the Senate on the evidence alone: *Be it therefore resolved*, That it is inexpedient to hear argument from the memorialist; which was rejected. Yeas 8—nays 12.

The yeas and nays being desired, those who voted in the affirmative are, Mr. President, Abercrombie, Perry, Pickett, Ross, Vining, Walthall and Watkins.

Those who voted in the negative are, Messrs Conner, Crawford, Evans, Garth, Hubbard, McVay, Merriwether, Moore of J. Moore of M. Powell, Skinner and Smith.

Mr Moore of J. offered the following resolution: *Resolved*, That the Senate do now proceed to determine by vote, whether the charges preferred by William Kelly, Esq. against Judges Saffold, White and Crenshaw, are sufficient, and sufficiently sustained, to authorize an address to remove the said Judges from office; which was adopted.

Mr President then announced to Mr Kelly, the accuser, and to Messrs Hopkins and Ormond, the counsel of the Judges implicated, the readiness of the Senate to proceed to the investigation of the charges, and that they would be heard in the order in which the Senate had granted them permission by a resolution of yesterday. Whereupon, Mr Kelly submitted an argument to the Senate, in support of his complaints against the official conduct of Judges Saffold, White and Crenshaw.

Mr Kelly having concluded his argument, Mr Hopkins informed the Senate of the intention of the counsel of the Judges to reply to Mr Kelly, and asked to be indulged until 10 o'clock to-morrow, to make preparation for that purpose; which was agreed to.

And then the Senate adjourned till 3 o'clock this evening.

*Evening Session. January 20th. 1829.*—Mr Perry from the special committee to which was referred the bill to be entitled an act for the relief of William May and Jones Reynolds, reported the same without amendment. Ordered that the bill be made the order of the day for a third reading to-morrow.

Mr McVay from the committee on propositions and grievances, to which was referred the petition of M. D. Williams, asking further compensation for his services, as one of the commissioners for adjusting the unsettled accounts between this State and Mississippi, reported that in the opinion of the committee, the prayer of the petitioner ought not to be granted. Ordered that the report and petition lie on the table.

A message from the House of Representatives by Mr Tunstall: Mr President, The House of Representatives have passed bills, which originated in the Senate, of the following titles, to wit: an act to compensate John Elliott, for services rendered the State; joint memorial of the two Houses of the General Assembly of the State of Alabama to the Congress of the United States, requesting that the unappropriated lands within the State of Alabama, may be ceded to the State for the purposes of internal improvement therein; joint resolution, proposing amendments to the constitution of the State of Alabama, so as to limit the tenure of the Judges' office to six years; an act prescribing the duties of sheriffs and returning officers, in holding elections and returning the votes of all persons voting on the proposed amendments of the constitution of the State of Alabama; and an act the better to secure the collection of the State revenue, and have amended the same, with the exception of the first mentioned herein, in the manner herewith shewn. In all of which amendments they desire the concurrence of the Senate. They have also passed bills which originated in the House of Representatives of the following titles, to wit: an act to alter the times of holding the courts in the 6th circuit; and an act for the relief of Elisha Dugan, sheriff of Walker county. In which they ask the concurrence of the Senate.

*Ordered*, That the Senate concur in the amendments made by the House of Rep-

presentatives to the joint memorial to the Congress of the United States, requesting that the unappropriated lands within the State of Alabama may be ceded to the State for purposes of internal improvement therein. *Ordered*, That the secretary acquaint the House therewith.

The question was put on concurring in the amendments made by the House to the joint resolution proposing amendments to the Constitution of the State of Alabama, so as to limit the tenure of the judges' office to six years, and carried. Yeas 15— Nays 1.

The yeas and nays being desired, those who voted in the affirmative are, messrs Abercrombie, Crawford, Evans, Garth, Hubbard, McVay, Merriwether, Moore of M. Perry, Pickett, Ross, Skinner, Smith, Walthall and Watkins.

Mr Powell voted in the negative. *Ordered*, That the secretary inform the House of said concurrence.

*Ordered*, That the Senate concur in the amendments made by the House to the bill entitled an act the better to secure the collection of the state revenue. *Ordered*, That they also concur in the several amendments made by the House to the bill entitled an act prescribing the duties of sheriffs and returning officers in holding elections, and returning the votes of all persons voting on the proposed amendments of the Constitution of the State of Alabama. *Ordered*, that the secretary acquaint the House therewith.

The following communication was received from the Governor by Mr Thornton:

EXECUTIVE DEPARTMENT. TUSCALOOSA, January 19, 1829.

The Hon. the President and Members of the Senate :

*Gentlemen*—I have the pleasure to transmit to you a communication from his excellency William B. Giles, governor of the state of Virginia, with an excellent and valuable new map of that state. This instance of kind attention and courteous liberality, on the part of a distinguished sister state, deserves at present a suitable acknowledgement, and upon some future occasion, such a return of the favor as we may have the opportunity to make. I have the honor to be, most respectfully, your obedient servant.

JOHN MURPHY.

*Ordered*, That the communication and accompanying letter lie on the table

A bill to be entitled an act to alter the time of holding the courts in the 6th circuit, was read ; and the rule requiring bills to be read on three several days being dispensed with, the bill was read the second time and referred to the committee on the judiciary.

A bill to be entitled an act for the relief of Elisha Duvall, sheriff of Walker county, was read and ordered to a second reading to-morrow.

An engrossed bill to be entitled an act giving a summary remedy against executors, administrators and guardians, was read the third time, and the question being put, shall the bill pass? it was determined in the negative.

An engrossed bill to be entitled an act to authorize the county court of Butler county to appropriate a sum of money therein specified ; and, an act authorizing the sale of certain lands belonging to the university of the State of Alabama ; were severally read the third time and passed. *Ordered*, that the titles of the bills be as aforesaid, and that they be sent to the House of Representatives for their concurrence.

A bill to be entitled an act for the payment of Martin Wells, was read the third time. Mr McVay offered an amendment to the bill by way of rider, providing for the payment of \$10 31 14 cents to J. P. Weatherly, for his fees and expenses in taking and conveying to the jail of Lauderdale county James Berry charged as an accessory to the crime of murder. *Ordered*, that the bill and amendment lie on the table till to-morrow

A bill to be entitled an act for the relief of Benjamin S. Brumley ; an act for the relief of Jeremiah W. Thomas, tax collector of Lawrence county ; joint memorial to the congress of the United States asking relief for the purchasers of public lands, and for other purposes ; and, an act to change the times of holding the courts of commissioners of roads and revenue of the county of Franklin ; were severally read the third time and passed. *Ordered*, that the Secretary acquaint the House of Representatives therewith.

Mr Abercrombie from the committee on county boundaries to which was referred

a bill to be entitled an act to extend the lines of Clarke county, together with the amendments made thereto by the House of Representatives, reported the same without amendment. Mr Abercrombie moved that the Senate disagree to the amendment made by the House to the bill by adding the following section: Sec. 3. *And be it further enacted*, That all that part of Wilcox county lying west of the middle of range four, including the Chactaw corner settlement in said county be, and the same is hereby attached to the county of Clarke; which was lost. Yeas 9—Nays 10.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Crawford, Garth, McVay, Pickett, Ross, Walhall and Watkins — Those who voted in the negative are, messrs Cammer, Lykes, Hubbard, Merriwether, Moore of J. Moore of M. Perry, Powell, Skinner and Young.

*Ordered*, that the bill and amendments lie on the table till to-morrow.

A message from the House of Representatives by Mr Ready: Mr President, The House of Representatives have adopted the following resolution, in which they desire the concurrence of the Senate: *Resolved*, that with the concurrence of the Senate the two houses will meet in the hall of the House of Representatives on Wednesday the 21st inst. at 3 o'clock P.M. for the purpose of locating the offices of register and receiver as provided for in an act entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named, passed by the present General Assembly, and also, to elect a register and receiver created by said act, together with twelve commissioners to select and value said lands; four of whom to be first elected from the counties bordering on the Tennessee river, and eight south of those counties; and also, to elect three persons as members of a medical board at Tuscaloosa. On motion of Mr Coopwood: *Ordered*, that the resolution lie on the table till to-morrow.

And then the Senate adjourned till to-morrow morning at half past 9 o'clock.

*Wednesday, January 21, 1829.*

The Senate met pursuant to adjournment.

The following message was received from the Governor, by Mr Thornton: Mr President, I am instructed by the Governor to inform your honorable body that he did, on the 20th inst. approve and sign an act to enable the State of Alabama to sell and dispose of certain lands therein named; which originated in the Senate.

Mr Perry from the committee on the judiciary, to which was referred a bill to be entitled an act respecting bail, reported the same without amendment. On motion of Mr Perry, ordered that the bill lie on the table till the first day of the next session of the General Assembly.

Mr Moore of J. from the committee on enrolled bills, reported as correctly enrolled, an act to emancipate a certain slave therein named; an act to authorize the judges of the county courts and commissioners of roads and revenue of the counties of St. Clair and Shelby to levy a special tax for certain purposes therein named; an act to authorize Simon Bowdon to emancipate a certain slave named Peter; an act to repeal in part and to amend an act entitled an act to authorize John Smith of Jefferson county to emancipate a certain slave therein named; an act for the relief of George A. Campbell, assessor and tax collector for Autauga county; an act to refund to the county treasury of Wilcox county a sum of money therein mentioned; and, an act to discontinue and establish certain election precincts therein specified; which were signed by Mr President.

Mr Ross offered the following resolution: *Resolved*, that his Excellency be requested to acknowledge in a suitable manner to the Governor of Virginia the receipt of the map of that State sent us through their chief magistrate: which was adopted.

Mr Hubbard called up the resolution from the House of Representatives, proposing, with the concurrence of the Senate, that the two houses will meet in the hall of the House of Representatives on this day at 3 o'clock P.M. for the purpose of locating the offices of register and receiver, as provided for in an act entitled an act to enable the State of Alabama to sell and dispose of certain lands therein named, passed by the present General Assembly; and also to elect a register and receiver created by said act, together with twelve commissioners to select and value said lands; four of whom to be first elected from the counties bordering on the Tennessee river, and eight south of

those counties, and also to elect three persons as members of a medical board at Tuscaloosa. Mr Perry moved to amend the resolution by striking therefrom the words "four of whom to be first elected from the counties bordering on the Tennessee river, and eight south of those counties;" which was lost. Mr Powell moved to amend the resolution so as to go into the location of the offices of register and receiver and the election of register and receiver of the land office this evening at 4 o'clock; which was carried. Mr Garth moved so to amend the resolution as to go into the election of twelve commissioners to select and value the lands as mentioned in the resolution, and into the election of three members of the medical board at Tuscaloosa on tomorrow evening at 4 o'clock; which was carried. The resolution as amended was then agreed to. *Ordered*, that the secretary acquaint the House of Representatives therewith, and desire their concurrence in the amendments made to said resolution.

A message from the House of Representatives, by Mr Tunstall, their clerk: Mr President, the House of Representatives have postponed until the first day of the meeting of the next General Assembly, the engrossed joint memorial of the Senate and House of Representatives of the State of Alabama in General Assembly convened, to the Congress of the United States requesting a modification of an act of Congress, passed the 23d May, 1828, entitled an act to grant certain relinquished and unappropriated lands to the State of Alabama, for the purpose of improving the navigation of the Tennessee, Coosa, Cahawba and Black Warrior rivers. They concur in the amendments made by the Senate to the resolution proposing to go into the location of the office of register and receiver of the land offices created by an act entitled an act to enable the State of Alabama to sell and dispose of certain lands therein named; and to the election of a register and receiver and twelve commissioners to select and value said lands as provided for in the said act, and also relating to the election of three persons as members of a medical board at Tuscaloosa.

The hour of 10 o'clock having arrived, Mr President announced to Messrs Hopkins and Ormond the readiness of the Senate to hear them in defence of the Judges implicated in the charges laid before the Senate by Wm Kelly, Esq. When Mr Ormond, in behalf of Judges Saffold, White and Crenshaw, submitted an argument to the Senate in reply to Mr Kelly and refutation of his complaints against the official conduct of the Judges accused. Mr Ormond having concluded his argument, Mr Hopkins was heard in defence of the charges preferred against Judges Saffold, White and Crenshaw, and Mr Hopkins having concluded, Mr Kelly was, by the permission of the Senate, heard in conclusion in support of his complaints.

And then the Senate adjourned till 4 o'clock this evening.

*Evening Session.*—On motion of Mr Hubbard, ordered, that Mr Skinner have leave of absence for the remainder of the session after to-day.

Mr Perry offered the following resolution: *Resolved*, that the Secretary of the Senate be and he is hereby authorized to employ a clerk, when necessary, during the remainder of the session; which was adopted.

A message from the House of Representatives, by Mr Tunstall: Mr President, the House of Representatives have adopted the following resolution: *Resolved*, that the Senate be now invited to assemble in the Representative hall for the purpose of going into the several elections contemplated by a resolution of the two Houses.—Whereupon the members of the Senate repaired to the hall of the House of Representatives, and having taken the seats assigned them, Mr President rose and announced the object of the meeting.

When the two houses proceeded to designate by joint vote the place for the location of the offices of Register and Receiver of the Land office created by an act entitled 'an act to enable the state of Alabama to sell and dispose of certain lands therein named.' The town of Athens, in Limestone county; Courtland, in Lawrence county; Florence, in Lauderdale county; and Tusculum, in Franklin county, being in nomination. The votes stood thus: For Athens 34—Courtland 48—Florence 7—Tusculum 2.

Those who voted for the location of the Land office at Athens are, Mr President, Abercrombie, Conner, Powell, Ross, Vining and Watkins of the senate; Mr Speaker, Banks, Barker, Barton, Bibb of L. Brandon, Cook, Hale, Edmondson, Fearn, Harris, Lane, Lawler, Lewis of M. Mardis, Mobley, Parsons, Penn, Rogers, Russell, Sanders, Terry Townsend of M. Walker of M. Weissinger, Will orne and Whitfield.

Those who voted for the location of the Land office at Courtland are, messrs Crawford

Evans, Garth, Hubbard, Merriwether, Moore of J. Moore of m. Perry, Pickett, Smith and Walthall of the senate; messrs Adams, Ambrister, Anderson, Belser, Bibb of m. Bridges Broadnax, Brown, Clark, Clough, Cole, Colgin, Coopwood, Duke, Dupuy, Flournoy, Foster, Gage, Hill, Hodges, Hudson, Lea, Massey, Metcalfe, Minis, McElderry, Parker, Pickens, Richardson, Robinson, Salter, Smith of J. Sykes, Tarver, Townsend of P. Walker of D. and Wallis

Those who voted for Florence are, messrs m'Vay and Wood of the senate; mr Bonnell Durrett, George, Perkins and Smith of L.

Those who voted for Fuscumbia are, messrs Skinner and Lewis of F.

Courtland, in Lawrence county, having received a majority of the whole number of votes, was declared by mr Speaker to be designated as the place for the location of the Land office created by an act entitled 'an act to enable the state of Alabama to sell and dispose of certain lands therein named.'

The two houses then proceeded to the election of a Register of the Landoffice, created by the provisions of the above recited act. John D. Carrol and Benjamin M. Bradford being in nomination. The votes stood thus: For mr Carrol 42 votes—mr Bradford 48

Those who voted for mr Carrol are, mr President, Abercrombie, Conner, m'Vay, Merriwether, Moore of m. Powell, Ross, Skinner, Vining and Walthall of the senate; mr Speaker, Barton, Bibb of L. Bibb of m. Bonnell, Brandon, Broadnax, Colgin, Dupuy, Durrett, Edmondson, Fearn, George, Harris, Hill, Hudson, Lane, Lawler, Lewis of F. Lewis of m. Penn, Perkins, Sanders, Smith of L. Sykes, Tarver, Terry, Townsend of m. Walker of m. Wessinger and Whitfield.

Those who voted for mr Bradford are, messrs Crawford, Evans, Garth, Hubbard, Moore of J. Perry, Pickett, Smith and Watkins of the senate; mr Adams, Ambrister, Anderson, Banks, Barker, Belser, Bridges, Clark, Clough, Cole, Cook, Coopwood, Dale, Duke, Flournoy, Foster, Gage, Hodges, Lea, Mardis, Massey, Metcalfe, Minis, Mobley, McElderry, Parker, Parsons, Pickens, Richardson, Robison, Rogers, Russell, Salter, Smith of J. Townsend of P. Walker, of D. Wallis and Wellborne.

Benjamin M. Bradford having received a majority of votes, was declared by mr Speaker to be duly elected Register of the Landoffice, created by the provisions of an act entitled 'an act to enable the state of Alabama to sell and dispose of certain lands therein named.'

The two houses then proceeded to the election of a Receiver of public monies, created by the before recited act. Jack Shackleford and Samuel Craig being in nomination. The votes stood thus: For Jack Shackleford 72 votes—For Samuel Craig 17.

Those who voted for mr Shackleford are, mr President, Abercrombie, Conner, Crawford, Evans, Garth, Merriwether, Moore of J. Moore of m. Perry, Pickett, Powell, Ross, Smith, Watkins and Wood of the senate; mr Speaker Adams, Ambrister, Anderson, Banks, Barker, Barton, Belser, Bibb of L. Bibb of m. Bonnell, Brandon, Broadnax, Brown, Clark, Clough, Cole, Colgin, Cook, Dale, Dupuy, Fearn, Flournoy, Foster, Gage, Harris, Hill, Lane, Lawler, Lea, Lewis of F. Lewis of m. Mardis, Massey, Metcalfe, Mobley, Minis, McElderry, Parker, Parsons, Penn, Richardson, Robison, Rogers, Russell, Salter, Sanders, Smith of J. Sykes, Tarver, Townsend of m. Townsend of P. Wallis, Wessinger, Wellborne and Whitfield.

Those who voted for mr Craig are, messrs Hubbard, McVay, Vining and Walthall of the senate; messrs Bridges, Coopwood, Duke, Durrett, Edmondson, George, Hodges, Perkins, Pickens, Smith of L. Terry, Walker of D. and Walker of m.

Jack Shackleford having received a majority of all the votes, was declared by mr Speaker to be duly elected Receiver of public monies at the Landoffice, created by an act entitled 'an act to enable the state of Alabama to sell and dispose of certain lands therein named.'

The elections being completed, the Senate then withdrew, and Mr President resumed the chair.

On motion of Mr Powell, *Resolved*, that the charges preferred by William Kelly, Esq. against Judges Saffold, White and Crenshaw, the responses of the Judges to said charges, together with the testimony taken at the instance of both parties, be entered upon the Journal of the Senate. Which are as follows:

*Charges preferred against the Hon Judges Crenshaw, Saffold and White*  
To the honorable the Senate and House of Representatives of the state of Alabama in General Assembly convened

To the administration of all governments, and especially in republics, a frequent recurrence to first principles can alone preserve the purity of the government, and the practical responsibilities of public functionaries can alone preserve the freedom of the citizens. Even the Judiciary by the constitution of Alabama have been supposed to partake of the frailties incident to human nature, and upon that hypothesis may be impeached for crimes, or removed for faults not amounting to a ground for impeachment. A candid review of the conduct of Judges Saffold, White and Crenshaw, has led my mind to the conclusion that an investigation of their conduct is

necessary, and as the conduct of which I complain, has been oppressive to my client and injurious to me, I cannot rest satisfied with myself until I exhaust all the constitutional means of redress known to the law. I have bestowed on the subject all the reflection I can command, and am deeply impressed with the perilous responsibility I incur. I have looked I trust with candor to all the results that may likely ensue, and feel constrained by a paramount sense of duty to seek redress for the injuries inflicted on my client, by conduct that I am unable to view in any other light than a palpable departure from the plain and acknowledged line of judicial duty. That the opinion of a majority of the Judges of the supreme court should form the law of property, and when known, should be obligatory on the minority, is a proposition too plain to require proof. Our government itself is founded upon the right of the majority to govern, and the decision of the majority in all public bodies, is viewed as the decision of the whole. The affairs of men can abide no other principle. Plain and obviously proper as this rule seems to be, it is lamentably true that a minority of the supreme court of Alabama have committed their fame to the hazardous experiment of rejecting its influence. A majority has reversed judgments, that a majority would have affirmed if present, with a full knowledge that the opinion of the absent member was in favor of affirmance, and if present, that his opinion would affirm the judgment.

The rule of justice in a supreme court should be uniform and applied with an even hand to all cases. It cannot be expected that the majority of the court will surrender their own opinion and acquiesce in the opinion of the minority; if they do not, it is plain that a different rule must be applied to different cases. The intelligence of the community must detect the fact, and a consequent loss of confidence in the tribunal of last resort must ensue. No member of the bar, or the community can more sincerely deplore that loss than I do. None can wish more ardently that justice should be known in the tribunals by its own attributes, and administered according to its own fixed principles. No man can more deeply regret the occasional mutilation of its fair form, that must result from staking it up on the doctrine of chance than I do. I say *chance*, for a thousand incidents may prevent the momentary attendance of a particular Judge, and if a minority in his absence can set at naught his known opinion, it refers cases to who may be present when called, and not to the fixed principles of justice as expounded by a majority of the Judges.— The fact that such a course has been taken, calls for a remedy of some kind. If reparation for the past cannot be had, security for the future surely may. It belongs to the Legislature to apply the remedy if necessary, and if not to restore public confidence in the tribunal of last resort, so far as a vote of approbation can have that effect.

Having made these preliminary remarks, I will now proceed to state the particular conduct of which I complain. The cases of Robert Thompson against Littleberry H Jones, three in number, were actions of debt brought in the circuit court of Lawrence. The defendant relied on the plea of usury, and on the trial in the circuit court the plaintiff demurred to the evidence of usury given by the defendant. The cases were brought to the supreme court by writ of error, and at January term, 1828, they were argued and continued for further argument at July term. Most likely on account of the absence of Judge Lipscomb, who had been called home by the sickness of his family. At July term they were argued again in the absence of Judge Perry, and the judgments reversed by Judges Saffold, White and Crenshaw, with full knowledge that Judge Perry was of opinion that they ought to be affirmed, and that if he were present they would be affirmed, as Judges Lipscomb and Taylor were also of that opinion. The legal result of an equal division in the supreme court is the affirmance of a judgment below, and that rule has been recognized and practised in our supreme court. Before Judges Perry left court at last term, he expressed a wish to do so and requested my consent, stating that he wished to visit his mother at or near Cahawba; that he had not seen her for ten or twelve years, and unless he could set out a few days before the rise of the court, that he could not do so; but anxious as he was to visit his parent, he would not leave court, unless the members of the bar principally concerned on the Docket would agree to it. I told him frankly that I felt a great wish to accomodate him, but that I had a few cases



in which I wished to have a full court, and mentioned those of Jones and Thompson; upon which he remarked that his absence would make no material difference in these cases; that his opinion was formed on the former argument, and then made known to the other Judges, and unless there should be a sufficient majority of the court against his opinion to decide the cause, it would not be determined. That is, if the causes should be found to depend on his opinion they would be retained until he could be present. Upon that statement I supposed he had conversed with the other Judges, and they had agreed to take the course he mentioned, and under that belief I gave my consent for him to leave court, and made no objection to taking up the causes in his absence. They were so taken up, and a minority of the court reversed the judgment contrary to his known opinion. This measure, I am unable to consider in the light of a faithful discharge of judicial duty. On the contrary, I am compelled to consider it a plain palpable departure from duty, essentially destructive of public confidence in the court, the law and its ministers. Suppose the life of Jones had depended on the result, instead of his money, would the minority have hanged him contrary to the known opinion of the majority, in the momentary absence of one of the Judges? If they had, would they not have committed judicial murder? Would the country have borne an outrage thus brought home to the understandings of men? The crime in that case would be more flagitious and more palpable, but the power that took his money would also reach his life. This procedure is surely objectionable, merely on the ground that four Judges out of seven were of the opinion that the defendant was not liable, but independent of that consideration, it was attended with other circumstances highly afflictive to the defendant and his counsel, and if I am not greatly mistaken, highly invidious to the fame of the Judges who adopted the hazardous course. As early as 1824, it had been determined by a majority of the supreme court, that interest stipulated under the act of 1818, could only be recovered from the date of the loan, to the time appointed for payment. That after the maturity of the debt, the stipulated interest was penal and void, and the law could only allow damages for a breach of contract, at 8 per cent per annum. This construction became the law of the land, and as such obligatory on the minority of the court, on all future occasions. In one case decided in 1824, that of Lewis and Oty, against Ewing and Clemens, in accordance with the principle of construction above mentioned, enjoined the uncollected excess, and decreed restitution of what had been actually collected above the sum that ought to have been adjudged. Many others were in a similar predicament, and supposing that justice would flow on the same channel, bills were filed to regain the excess. These causes were argued in the supreme court at July term, 1826, and held under advisement until January, 1827. The bills were then dismissed, merely upon the ground that no tribunal, not even a court of equity could afford relief for an injury resulting from a mistake of the law, however enormous in extent or ruinous in its character and consequences. That although by the construction of the law before mentioned, which was again sanctioned by a majority, the defendants could not have recovered the money in dispute, and although they had no title to it, sanctioned by law, justice or morals, yet as they had possession of it, they might keep it, or what amounts to the same thing in Dutch, that the complainant's had no remedy to regain it, because they had in some instances paid it without suit, which was called *voluntary*, and because they might have defended at law when they were sued. The rule was however then established, that for an injury resulting from a mistake of the law, there was no redress, and the same Thompson who sued Jones, then had the full benefit of it. For his benefit, other men were ruined, because they had paid him enormous sums that he could not have recovered by law, under a mistaken belief that he could compel payment. He was then emphatically covered by the strong wing of the court, and protected from the appalling calls of justice. But when the application of the same rule was likely to make him a loser, *"the case was altered."* He was not only protected from injury, but permitted to dissolve the solemn sanction of a public statute. This will be obvious by stating his predicament. Under the act of 1818, he obtained the note of Wade and others, for about \$4400, payable about the 1st of January, 1820, (with interest thereafter on the above sum, at the rate of 20 per cent a month, until paid.) Of this note 1800 dollars had been paid by the makers, and credited



as part of the interest. By the law as expounded in 1824, he was only entitled to interest on his debt, at 8 per cent per annum, the stipulation of 20 per cent per month from its terms being to accrue after the debt fell due, was penal and void, and by the law as expounded in 1827, for his benefit, he was bound to know correctly the extent of his legal rights, unless the court intended to establish for him a rule peculiar for himself. In the spring of 1822, he was entitled by law to collect on his note, the balance of principal and interest, at 8 per cent per annum, after deducting the 1800 dollars paid by his debtors. In that state of affairs, L. H. Jones, who was friendly to the debtors, in order to save them from ruin, interposed between them and their creditor, and became paymaster in their stead. Thompson claimed the 20 per cent a month, but agreed to remit part of it. The sum really due him, was less than 4000 dollars. To secure that sum, and for giving day of payment, he took the notes of Jones, three in number, with good security for two thousand one hundred dollars each, payable in one, two and three years, with interest from the date.

Now if he knew at the time of this arrangement, that his 20 per cent a month, was a mere penalty that could not be enforced, and that he was only entitled to collect the balance of principal and legal interest, after deducting the \$1800, that had been paid, it is unquestionably clear, that he committed usury under the act of 1819, which makes void all notes including more than legal interest. Chief Justice Lipscomb, in giving his opinion, observed that if the court was right in the rule, established in 1827, relative to mistakes of law, it was a clear case of usury. Thompson, like other men, must be presumed to know the law that governed his case, and bounded his rights. That his rights at any rate must be adjudicated as though he did, and the application of that principle to the case, was decisive in favor of the defendant. Yet the minority of the court exempted him from its operation, and treated him as though he had mistaken the law, and the extent of his right, and as though the court had competent authority to remedy the injury. It is true that Judges White and Crenshaw, did not go upon that ground, nor did their opinion require the aid of it. Notwithstanding two solemn adjudications of the supreme court to the contrary, pronounced in 1824, and again in 1827, as before mentioned, they held that the 20 per cent a month was legal and recoverable, and of course that no usury had been committed. In this they rebelled against a known principle of judicial action, to wit: that a solemn decision on a principle of law, or construction of a statute, especially when that decision is in manifest accordance with natural and moral justice, and prescribes a boundary to oppression, when pronounced by a majority of the court, is in all subsequent causes, equally binding on the minority. No other principle can preserve the character of the court, or the reputation of the dissenting Judge. In defiance of the principle settled on two occasions as before mentioned, they held the 20 per cent recoverable, and were for reversing the judgment, and rendering judgment for the plaintiff for all he claimed. Judge Saffold however, did not go so far. He held the stipulated interest to be penal and void, but he said it was not usury, to take the notes sued on, because neither party thought it was at the time of the arrangement. What was that but relieving against a mistake of law? The facts were indisputable, and understood exactly alike by both parties. The mistake was as to Thompson's legal right to exact interest on the note taken up by Jones, at the rate of 20 per cent a month; a question purely and exclusively legal, depending on the true construction of the statute, under which the notes were taken. Their mistake on that point was the reason why neither party thought it was usury. If the court was competent to correct that mistake, they were equally so to correct the mistakes of others, under which ruinous payments had been made to Thompson.

Judge Saffold refused to relieve others, and did relieve Thompson, not only from his mistake, but allowed his mistake to control a public statute, and render it nugatory. Would not all usurers make it a point to mistake the law, and be ignorant, if that ignorance could save them from the penalties of the statute, and legalize their claims to regain the principal and legal interest? Judge Saffold however, would not agree to render judgment for the plaintiff, to the extent of his claim, being of opinion that he could only recover on his three notes, the amount that he could have recovered on his original note. He was therefore in favor of remanding the causes to

the circuit court, to allow a plea of partial failure of consideration to be filed, and on that point, Judges Lipscomb and Taylor, being unable to affirm as they wished to do, joined him as the least attainable evil, so that not only the opinion of a majority of the court, but the opinion of a single Judge has decided the cause, or at least controlled its destiny as to remaining, for it is certainly true that the causes are, in fact remanded, and equally so, that no member of the court thought that they ought to be, but Judge Saffold. In the reverse of these judgements, not only has a minority of the court controlled the known opinion of the majority, on account of the momentary absence of Judge Perry, but Thompson has been exempted from the operation of the rule, established by themselves, for the government of other men's cases, and without the manliness to annul or revoke it, they have allowed him the benefit of both sides of it. He is practically relieved from his mistake of the law, while other men are ruined by theirs for his benefit. No sophistry can obscure, no ingenuity evade, or artifice elude this conclusion.

If the decision in his favor had been made by a majority and acknowledged and corrected a former error in opinion, it would have been provoking to see him reap the benefit of the correction after having reaped so beautiful a harvest under the error; but it would have been borne, and if it could have been viewed as the return of justice to the habitation assigned to her by the laws of the country would have been hailed with pleasure. But the rule of 1827 was not revoked or overruled. It remained in all its destructive vigor against all men but Thompson. To him, and to him alone, it was harmless. He, and he alone, was exempt from its operation.—The case of McWhorter against Stundifer decided at the same time, and if I am not mistaken on the same day, proves this beyond controversy. Standifer had obtained a judgment at law against McWhorter in Franklin circuit court for a large amount of interest, five per cent a month and under the lash of an execution had coerced a payment of part and obtained McWhorter's notes for the balance after remitting a trifling part of the damages. McWhorter afterwards sued out a writ of error at June term 1824, of the supreme court: the judgment was reversed and rendered for principal and interest, at eight per cent per annum. It was believed that the notes being founded on the judgment must abide its fate, and that the consideration had failed for all above the amount of the corrected judgment. One of the notes however had been put in suit and judgment given on it before the original judgment was reversed. Of course no plea to the consideration could be put in while the original judgment was in force, and McWhorter filed his bill in equity and a perpetual injunction was decreed in the circuit court. That judgment was reversed and his bill dismissed by the supreme court, and McWhorter informed for the first time, that he had gained nothing by the reversal of his judgment but the pitiful pleasure of subjecting his adversary to the costs of the reversal; in fact that the court had been sporting cruelly with him and did not intend him any practical relief by reducing the amount of the judgment. Judge Crenshaw delivered the opinion of the court and gave no reason for dismissing the bill but the alleged operation of the various opinions settled in 1827. They were supposed to be elastic enough to be drawn over the ground of controversy and to justify the collection of a note emphatically oppressive and founded on no consideration. He said to be sure that McWhorter might have made defence at law, but that only proved his ignorance of the case or the law, for it is entirely clear that no defence at law can be made to a note given in satisfaction of a judgment so long as that judgment remains in force. Chancery alone can relieve in such a case—with due deference to the court I contended then and now repeat that McWhorter's case was not necessarily decided by those of 1827, for it was unlike any of them in this important feature, to wit: the supreme court had actually reversed the judgment against him and rendered judgment for a less sum. They were believed to be in earnest when they did so and not to be merely jesting on a subject so serious and sporting so cruelly with the honest credulity of the citizen. In no case decided in 1827, except *Turner vs. Manning*, and in that a release had also been given, had the judgment complained of been actually reversed, and as the boundary of McWhorter's liability had been settled by a judgment of the supreme court a new principal was necessary to be established in addition to the memorable catalogue of 1827 to defeat his claim to relief. The new principal was this, that a note

given in discharge of an erroneous and unjust judgment is incontrovertible and must be enforced, although the judgment for which it was given is completely within the control of the law, and has been actually reversed not for informality or irregularity in the proceedings but on the principals of liability. The court did not hazard the assertion of this principal in language but alledged simply that the point already settled in 1827, were applicable to the case and decisive of its fate. They could not intend to say that an injury resulting from a mistake of the law could be remedied. McWhorter was surely injured and ought to have been relieved but was not; on the contrary he was made a beggar in his old age, by applying the rule of 1827 to his case in its utmost and most unfeeling and merciless rigor, and Thompson at the same time exempted from its operation. I was counsel for Jones and McWhorter both, and to lose both cases, the one by applying the rule of 1827, where there was no occasion to invoke it and where it really could not fairly apply, and the other by refusing to apply the same rule to a case incontrovertibly and directly within its scope, seemed to mark me as the medium of misfortune to my clients. To see the justice of my country thus mangled and mutilated excited feelings that it is painful to remember, difficult to describe, and impossible to forget.

This head of complaint may be summed up in a few words. Judges Saffold, White and Crenshaw, a minority of the whole court, reversed the judgments of Jones at the suit of Thompson when they well knew that Judges Perry, Taylor and Lipscomb were of opinion that they ought to be affirmed, and that if Judge Perry had been present they would have been affirmed by the law of the court. Being a minority, they had no power so to act.

They should either have acquiesced in the known opinion of the majority and affirmed the judgments, or held them under further advisement until Judge Perry could attend and give his opinion. Other men could then expect the same justice that was dealt out to Thompson; as it is, he is a solitary exception to the rule that must govern other men's cases. That he should be thus exempted from a general rule and enjoy a measure of justice attainable by no other member of the community cannot be right. The judges who have thus protected him against the calls of justice must have incurred a responsibility to the country, whose commissions they hold. To what extent, the wisdom of the Legislature will decide. Thus far the conduct of the Judges I complain of has been considered collectively. I have a separate complaint against each which I will now proceed to state. The causes of Thompson against Jones, as before remarked, were removed to the circuit court of Lawrence and stood for trial at last September term. The defendant was then ready and insisted on a trial. Judge Saffold then presiding continued them to allow the plaintiff's counsel time to prepare to argue them a fourth time on the same grounds he had already argued them upon three times. No complaint was made on account of absent testimony; in fact the plaintiff had none, at least he gave none on the former trial. He then relied on his notes and demurred to the evidence as usury given by the defendant. When the causes was called the plaintiff's counsel observed that he had expected an additional plea of a partial failure of consideration to be filed, and could not prepare for trial until the plea should be filed. The defendant's counsel replied that no such plea had or would be filed or offered. That the causes would be again placed on the same ground and no other that had been relied on upon the former trial. The plaintiff's counsel then observed that he had not expected that usury would be again relied on and was not as well prepared to try the causes on that ground as he wished to be. The defendant's counsel still insisted on a trial, but his honor remarked that the expectation of the plaintiff's counsel that an additional plea would be filed, was a mere calculation, and if he was not ready to try the causes they should be continued. The counsel then observed that he was not as well prepared as he would like to be, and the causes were continued.

It will appear from the bill of exceptions signed by his honor that it was not alleged that the plaintiff had any testimony to produce that was not present, but that the unreadiness spoken of must be referred to the preparation of the counsel to argue the causes a fourth time. I am unable to believe that the alleged ground of continuance was the true one. No person who had heard the former argument could believe that the counsel was unprepared to argue the question again. Judge Saffold

had formed his opinion upon two full arguments in the supreme court and of course required no further argument; but however well founded in fact the allegation might have been, the cause was not sufficient for a continuance. Judge Saffold refused himself to continue the case of Smith & Anderson even for the absence of the counsel employed, because other counsel ought to have been employed in time to prepare the case. In this his honor permitted himself to make another difference between Thompson and other suitors. In granting the continuance to Thompson, on the pretence of unreadiness to argue the cause, his honor must have acted in obedience to some under current that was not visible on the surface, and under the influence of reasons, he did not avow. If he had tried the cause, he would of course, have decided it according to his own opinion given in the supreme court. Four Judges, forming a majority of the whole supreme Court, were known to his honor to entertain a different opinion. If he had decided the causes in the circuit court, he could not sit in the supreme court on their revision. It is impossible to doubt as to the final result. His opinion must have gone by the board; the majority of the court would surely have vindicated their authority from the depredation committed on it by the minority. Such would have been the result if his honor had tried the causes. He has continued them however, and by that continuance, the result may be varied. The minority may prevail and control the majority; nay, the opinion of a single Judge may prevail without a single compurgator on the bench; whenever one of the Judges shall hold the court whose opinion is in favour of the defendant, it does not require the spirit of prophecy to foretel that the plaintiff's counsel will be ready to argue the cause. Should the causes be decided by one of the majority, he may yield his own opinion, and that of the majority, and decide the cause in obedience to the opinion of the minority which, at present, passes for the opinion of the supreme court; and if it were really so, would be binding to the circuit court. Whatever opinion he may give, he will be "hors de combat," in the supreme court, and the chances of success by the absence of another Judge, or some other accident, be thereby increased. Should he obey the minority, Judge Saffold will be ready in the supreme court, to vindicate his course; and Judges White and Crenshaw, unable to push oppression to the extent of their wishes, will acquiesce, and put up with what they can get, as a half a loaf is better than no bread. An equal division will affirm the judgment and the vanity of Judge Saffold be tickled in enforcing his own opinion upon the court, by the influence of circumstances leading to acquiescence, when in fact, not a single Judge really agreed with him throughout. Could his honor have been seduced by the pride of opinion, thus to reserve himself for the final vindication of his doctrine? Whatever may have been his intention, he has in fact, become a mere piece in the hands of the plaintiff's counsel, to be played off in the supreme court. It may be right in him, as he had but few pieces, to wish to keep them all in trim for action, especially the piece of largest calibre, without which the balance of his park would be inefficient, whether we regard the number or size of the remaining pieces. It may be right for the counsel to wish to spike a gun in the adverse battery, but it cannot be right for a Judge to adopt such a course. The principles involved, and not the position of the pieces on the board, should be his guide.

It was Judge Saffold's duty to try the causes, unless a legal cause for a continuance had been shown. That duty he violated under circumstances peculiarly oppressive to the defendant and his counsel. The defendant lived in Florida; his testimony was then ready; it may never be again; he had incurred the expense of travelling from Florida to attend the trial; his counsel had determined to remove to New-Orleans, and would have done so, but for the astounding continuance before mentioned. That continuance lessened his means of removal, and subjected the defendant to the expense of obtaining other counsel. That continuance imposed an obligation on the counsel thus injured by it, to hold its author responsible. From the duty thus imposed, he will not shrink, but face with whatever firmness he can command all the perils of the effort. Judge Saffold was once his personal and political friend. They have yet many common friends, who deplore the difference that has grown up between them, and if the wishes of those friends could prevail over a paramount sense of duty to my country, my client and myself, I would yield to their wishes, and forbear to make the present application.

I persuade myself that no fact I have stated will be controverted. If my reasoning is unsound, it can be answered. I feel a deep sense of injury, and can only call on a Judge to explain his conduct, through the medium of the Legislature. If the conduct I complain of, can be fairly explained, I persuade myself that I shall have judgment enough to perceive it, and candor enough to avow it. I have no further complaint against Judge Saffold; I wish he may be able to answer these, in a manner auspicious to his fame, and creditable to his office.

When Judge Crenshaw held the circuit court of Lawrence, the case of Pattison against Burford was tried. I was for Burford, and messrs Ormond and M'Clung for Pattison. The suit was brought on a store account, for about sixty dollars; the plaintiff proved his account—the defendant relied on a setoff, and proved the sale of a mule to the plaintiff at \$100; the plaintiff then proved another account against the defendant; to avoid the setoff, the defendant then offered to prove that the last account had been paid. The Judge refused to allow it, because the defendant was bound to give all his evidence, when he was first allowed to make his proof. I contended in vain that the account had not then been introduced, nor could the defendant anticipate that it would be, and of course he could give no evidence to repel or explain it. His honor was inexorable, and rejected the evidence. The plaintiff's counsel however, could not stomach his honor's doctrine, and agreed for the evidence to be heard, and on the joint wish of both parties, his honor reluctantly yielded his ground, and allowed the evidence to be heard. I mention this, as one instance of that decisive nobleness, for the station that is rendered so manifest by all his conduct taken together.

I understood at the same court, from other members of the bar, that his honor held the doctrine for which Chase was impeached, viz: that in a capital case he was the sole judge of the law, and the jury were bound to take it as laid down and expounded by him. I do not know that he does, or ever did hold, that doctrine, as I never heard him enforce or avow it, but I believe it on the authority of the bar, of whom I heard it. If he does hold doctrines so inimical to freedom, he is unfit to be the arbiter of life and death, and should be removed from office for the safety of the community.

In the case of Lucas against Pope and Hickman, Judge White disobeyed the mandate of the supreme court. The case was first tried in the circuit court of Madison, and the plaintiff recovered. The judgment had been reversed in the supreme court, and the cause remanded for further proceedings. At a subsequent time the plaintiff obtained leave to amend his declaration, by averting the diligence used to obtain payment from other parties, apparently bound on the paper sued on, for want of which averments, his former judgment had been reversed. To the declaration so amended, the defendants plead the judgment of the supreme court in their favor, in bar of the action. The plaintiff replied, that the judgment of the supreme court was not final and conclusive on the rights in controversy; but on the contrary, the said court had remanded the case for further proceedings to be had. The defendants demurred to that replication, and his honor sustained the demurrer, and gave judgment for the defendant, by which the plaintiff was subjected to the expense and delay of prosecuting a writ of error to obtain the trial of his cause that had been ordered in the first instance. In the mean time Hickman, the only solvent defendant determined to remove to Tennessee. Bail had not been required in the first instance, because he was then a resident freeholder. When he determined to remove, a bill was filed to obtain an order for bail, and Judge Taylor made the order, and bail was given; but his honor Judge White, again presiding at Huntsville, dismissed the bill, and discharged the bail, and Lucas has had to sue in Tennessee, on the record of his final judgment. His recovery amounted to upwards of \$10,000. John P. Hickman in whose favor the extraordinary decisions were made, was a member of the Legislature when his honor was elected a Judge; and is known to have been an active and zealous friend, and supporter of his honor's election, without the aid of whose exertions it is probable he could not have been elected. Could his honor have been beguiled by the influence of gratitude for past favors, into so strange a conclusion; so gross a mockery against lawful authority; such palpable unqualified disobedience of the mandate of the supreme court; so strange a decision in favor of such a

friend? Though it may not be set down as *à quid pro quo*, is to say the least of it, highly inauspicious to the fame of the Judge, and destructive of that confidence that ought to prevail towards the tribunals of Justice. It must have originated in the feelings of partiality to his friend, either sensible or insensible; to a degrading and submissive reverence for the counsel who filed the plea, or in ignorance altogether too gross to be tolerated on the Bench. In any, and every aspect, it presents conclusive evidence of great unfitness for the station he holds.

The fall term 1827 of Madison circuit court, was held by Judge White; during the term, two bills were found true for slander, one against John W. Hewlett, and the other against James W. McClung. After finding a true bill by the grand jury, in capital cases, the defendants are not entitled to bail. Several days elapsed between the finding of the bills and the trials, and I am informed that neither of the defendants was ever imprisoned, but on the contrary, were going at large under a kind of honorable parole to the sheriff. If that fact was known to his honor, he was guilty of gross neglect of duty in allowing it. If it were not, he was greatly remiss as it seems to me, in not finding out what was so important in the administration of justice, and so generally known.

His honor may be able to explain this affair in a satisfactory manner, and if he can it will be fortunate for him that a suitable opportunity is afforded, as he has certainly been blamed by a portion of the community, whose opinions he cannot command.

This closes the statement of facts that I thought proper to submit. Against the actual or supposed faults of Judge Saffold, it gives me pleasure to testify that his general qualifications for the discharge of his official duties are respectable, and his conduct generally, as a minister of justice, has been unobjectionable and satisfactory to the profession and the community. How far that consideration may influence the course that it will become the Legislature to pursue on the subject of this application, is submitted to their wisdom. With the rights I have, I feel constrained to ask his removal from office by address under the constitution. I do not allege that he has been actuated by that corruption of motive that would subject him to an impeachment, but I submit that he has departed so far from the true line of judicial conduct in reversing the judgment and continuing the causes of Thompson against Jones, as to subject him fairly to a removal by address. It would be uncandid in me to pretend that my former friendship for him has not undergone a change. I will not deny that the cords of that friendship have been torn asunder. My confidence has been withdrawn with reluctance and my good opinion surrendered with pain and regret.

As to Judges White and Crenshaw, they have never been either my friends or my foes, so far as I know. Their frigid sophistical conceptions of the rules of law, and the canons of property, have led them so far astray from plain and palpable justice, and their heartless disregard of its plainest dictates, has given me a very humble opinion of their fitness for the Bench. Indeed, independent of the specific objections herein stated, their qualifications for the Bench are so humble, their unfitness to preside in the temples of justice, is so palpable and extensive, that for that general unfitness alone they ought to be removed. Heaven has denied them the capacity to dispatch the business of the country; wherever they go, it remains unfinished. Unconnected with the administration of justice, they are doubtless good men, but they are wretchedly deficient in aptitude for the dispatch of business. When a man proposes himself as a candidate for the office of Judge, it amounts to an implied assertion on his part, that he is reasonably qualified to do the business correctly, and to dispatch it in reasonable time; if in either particular he turns out to be greatly mistaken, it vitiates the contract, and justifies the recall of his commission in the mode pointed out by the constitution; however honest he may be, and whatever purity of intention may attend him, if he cannot for want of capacity do the business he engaged to do he ought to be removed; for such a case the constitution has given the Legislature specific power to remove from office without impugning the integrity of the incompetent incumbent.

Such is exactly the predicament of Judges White and Crenshaw; and such the remedy that I seek to apply. A sense of injury resulting from the incompetency of

which I complain, has induced me to hazard the consequences of seeking redress. If I know myself I have no wish to injure either of the individuals; as minister of justice I complain of them, not to the populace where an artful enemy might excite prejudice against them, but to the Legislature clothed with power to investigate the conduct complained of, and to apply the suitable remedy to the evil if one exists; clothed with power to remove from office by address, for causes not amounting to a ground of impeachment, to reprimand or approve the conduct complained of; to provide if necessary, a remedy by law against the recurrence of the evil. It is true, I feel a deep sense of injury; and if the feelings resulting from that cause, have in any thing misled my judgment, and induced me to view the conduct of the Judges too severely, I am consoled by the reflection, that a single individual has no power to injure them, even if he wishes to do so, provided they have not furnished him the weapon by misconduct. If indeed their conduct can abide the test of scrutiny, I can do them no harm.

They can be in no danger of injury from a single unaided individual. The tribunal I address will protect them if they deserve it. I prefer any result to a continuance of the present state of things. Even open and avowed hostility is preferable to the dubious relations that have existed for some time past. Whatever may be the result, I shall discharge my duty in a manner that I trust will be considered respectful to all concerned. I have written to the Judges of whose conduct I complain, and apprised them of the course I considered it my duty to pursue, and the points of objection to each.

If it is legal and right for a minority of the supreme court to reverse a judgment, contrary to the known opinion of a majority, I want to know it. If it is right so to stake up the justice of the country on the doctrine of chance, let the Legislature announce it to their constituents by a vote of approbation. If a judgment is to be reversed, not because it is contrary to law, but because a Judge whose known opinion would affirm it may happen to be absent, let it be so proclaimed.

If the same cause thus reversed can be properly continued by a Judge who formed one of the minority, whose opinion has been formed on two full arguments in the supreme court, and who can of course need no further argument, merely to allow counsel to prepare to argue it a fourth time, on the same grounds that the same counsel had argued it on before, without even the allegation of the absence of testimony or any other cause, but the unreadiness to argue, where no argument could be needed. If this can be lawfully done, let it be so made known.

If Judges White and Crenshaw, are reasonably qualified to discharge the duties of their station; if *frugal Heaven* has not withheld from them the aptitude and capacity to dispatch the public business, let their fitness be established by the decision of the Legislature.

Let the issue be fairly made up and tried. I assert their unfitness for the station under the fullest and firmest conviction of its truth. If I am mistaken, let the testimony of the Bar and the people of every grade of intellect, who have seen them on the bench, and above all, let the crowded dockets left behind them wherever they go, compared with the pitiful amount of business they dispose of, correct my mistake. My motive for asking this inquiry has been truly stated. I ask it under a sense of duty resulting from a sense of injury. Should a worse or more unworthy motive be ascribed, it cannot enlarge the capacity of incompetent Judges, nor extenuate the faults of the culpable. To those who may differ from me in opinion, and be charitable enough to suppose that I have been misled by the force of excited feelings, and urged by that cause to precipitate and erroneous conclusions, I beg leave to say that my professional disappointments have been afflicting in their character, and blasting in their extent. I have struggled with oppression, merciless and insatiable in its character, and have struggled in vain. The Judges have given it the sanction of their authority. After exciting my hopes by the decision of *Oty and Lewis vs. Ewing and Clements*, they blasted them by departing from the principles of the case, and refusing relief to others in a similar condition. Under a belief that they would abide the principles settled and sanctioned by themselves. I made contracts that I could have complied with, if they had met the expectation generated by their



own decision; but which I had no means to meet when they departed from their decision, and dismissed my cases. Nay, I was by that unexpected event plunged into a state of embarrassment, little short of hopeless irretrievable ruin.

If such a cause has led to something that calmer judgment would reprove, it is not surprising. I have endeavored to avoid it, and to rebuke misfortune by meeting it firmly. I wish to make my solemn protest against the conduct I complain of, as durable as the records of my country. If my name should pass on to another age, even by its connection with the present controversy with men in office, I want it to go as an advocate of justice, disposed to resist oppression in all its forms: judicial, as well as despotic. The tribunal I appeal to, is in a condition propitious to the exercise of calm unbiassed judgment. They have not been elected with a view to this controversy, and cannot have prejudged its merits. The repose of the people has not been disturbed. I have no more to say, but to express the confidence I feel in the justice and intelligence of the Legislature.

That I may be responsible for what I have written, I hereto set my name.

*This December 27th, 1828.*

WM. KELLY.

### RESPONSES OF THE JUDGES, &c.

#### *The Answer of Judge Saffold.*

To the honorable the Senate and House of Representatives of the state of Alabama in General Assembly convened.

Reuben Saffold, one of the Judges of the State, against whom, with others, William Kelly has exhibited charges of official misconduct respectfully submits the following answer :

This respondent claiming no exemption from the implied condition as well as the constitutional liability under which he accepted the office he now holds, admits with perfect sincerity his responsibility to the General Assembly, for the correct performance of the trust reposed in him. As open and avowed hostility is to be preferred to a war in disguise, he hails with pleasure, the appearance of charges, which, by assuming a tangible form, will enable him to extract their sting and thus silence the secret whisper, and extinguish the malicious inuendo, by which character is most generally assailed, without the possibility of exposure or detection.

The complaints of the memorialist being multifarious, and applying also to some of the other Judges, this respondent deems it sufficient to answer such of the memorialist's charges, as are directed specifically against him, or those in which he is included with others, without particular regard to the author, or his motives, and with the decorum due to those to whom it is addressed.

All the charges in which this respondent is named, or attempted to be distinguished from a clear and decisive majority of the supreme court, relate to the three cases of Robert Thompson vs. L. H. Jones ; all of which cases depend on the same principles, and were considered as one, first in the supreme court, and afterwards in the circuit court of Lawrence. And here this respondent would beg leave to have it borne in mind, that he has no acquaintance with, nor does he know the face of either of the parties, Thompson or Jones. And under the diversity of opinion of the four other Judges with whom he had the honor to be associated, at the time of the decision of the supreme court, his opinion had it been thrown into the scale of either affirmance or reversal, and rendition would have resulted in a difference of several thousand dollars, for or against either of the parties beyond the amount; to attain which, was the object of remanding assented to by the whole court. And let it be also recollected, that Judge Lipscomb being absent at January last, when the said causes were first argued, if it be true, as stated by the memorialist, that Judge Perry's opinion was then formed, had the cases then been decided the other Judges, thinking as they ultimately did, the decision must have been the same that it was finally at the last July term. On suggestion, however, of some of the Judges, and by mutual consent, the cases were retained for further investigation, and on the suggestion of counsel, another argument was agreed to be heard at the succeeding term. This respondent does not doubt that several, or all the members of the court had conceived impressions in favor of affirmance or reversal; he had himself; but he has no recollection of having, heard previous to the discussion in July, what Judge Perry's opinion was, or what was the inclination of his mind. He thinks it not improb-



able Judge Perry may have expressed, at the first argument, what the leaning of his mind was; but it, within the hearing of this respondent, every trace of it has faded from his recollection. His understanding was, the cases were retained that some of the Judges, probably all, might further examine the question, and become better satisfied on the law. If this statement be true, and he expects it to be sustained by the recollection of all the Judges who were associated in the last argument and decision, all the facts are disproven, on which the several charges nearly rest. It removes the least shadow of objection as to the time at which the decision was made, or the number of Judges who concurred in it; and demonstrates conclusively, that there could have been no understanding between Judge Perry and the other members of the court, that the cases would, in any event, be longer retained. Besides, this respondent knows no instance in which a Judge, who did not hear the latter argument, has given his voice in the decision; and he had supposed it could not be tolerated, believing it unprecedented in the supreme court of this or any other state, and dangerous in principle. Therefore, had Judge Perry's opinion been formed on the first argument, and known to the whole court as alleged, yet as he was absent at the trial, the court competent without him, and no objection made to the progress of the causes until after the judgement was pronounced, to have longer retained them to allow the defendant a third effort to obtain a majority, would have been a departure from the uniform practice in this state and elsewhere, and a direction from legal and constitutional duty. This respondent does not profess a perfect recollection of the incidents connected with these causes at the last January term, and was so far from having any knowledge of what Judge Perry's opinion was, that he did not recollect that Judge Perry was on the bench at the time of the first argument, when notice of these complaints first reached him; subsequent information and inquiry has satisfied him of his mistake. Judge Perry also, since his arrival here, was of opinion that at the first argument only four Judges were present; it is ascertained there were five. This respondent has more confidence in his recollection of all the material occurrences connected with the last argument and decision. But the burden of the charge is, that the causes were not retained on account of the absence of one Judge, when a court consisting of five Judges competent to act on them, were present. We have held two entire terms of the supreme court while one Judge was absent from each. It very often happens, that when all the Judges are present, not more than five can be had out of the seven on the trial of particular cases. But the point of the memorialist's charge cannot be that the court permitted the cause, to be argued in the absence of Judge Perry, for the memorialist admits he made no objections to it; it must then be in the refusal of the court, after judgement was pronounced to retain the causes until Judge Perry's arrival, in the expectation that his voice, if heard, would vary the result. The absurdity and illegality of this has been shown. But if this respondent erred with Judges White and Crenshaw, in rejecting the proposition, longer to retain the causes, they erred in common, with Judges Taylor and Lipscomb; as all the Judges were unanimous in rejecting the proposition. The preposterous anomaly of selecting the three Judges above named, for the sacrifice, can be accounted for by no correct rule of human action, of which this respondent has any knowledge. If this respondent were to hazard a conjecture, it would be that the Judges not included unconsciously established a claim to his support, by having expressed an opinion in his favor, on those causes which are yet to be finally determined.

Having answered this charge, this Respondent proceeds to one of a kindred nature. The memorialist complains, that, 'the opinion of a single Judge has decided the cause, or at least controlled its destiny, as to remanding,' &c. referring to this respondent. It is probably unnecessary to remark to this honorable body, that in the number usually composing a supreme court, nothing is more common, than for the opinion of one Judge to determine the majority, and that it is neither desirable nor possible to avoid it. Had either of the Judges present, entertained an opinion different from the one they did, it might have still further controlled the destiny of the cause. The memorialist would have had no objection to controlling the result by the opinion of a single Judge, could that Judge have been the absent one; notwithstanding he had the benefit but of one argument, and that six months previous, when

the Judges of whom he complains, had the benefit of a second argument, and was aided by many new authorities not cited on the first argument. Had the decision in the case of *Thompson vs. Jones*, been longer withheld, it might well have been said of the plaintiff, as the memorialist has had the courtesy to say, in reference to another, 'that the court had been sporting cruelly with him, and did not intend him any practical relief,' by pretending to give him a trial.

The memorialist also charges that the decision in favor of Thompson in the last mentioned case, was a departure from the principles of other decisions. This respondent does not know whether the Legislature will think it proper or necessary to make this charge the subject of inquiry, or to examine the correctness of the law of that case, nor has he any choice. His written opinion on it, is herewith submitted as a part of his response, subject to inspection and the strictest scrutiny which your honorable body may choose to give it. The sum of the objection is, that whilst by the decisions of January, 1827, we decided in favor of Thompson, that ignorance of the law would not avail to rescind a contract; yet when the same principle should have operated against him in the case of *Thompson vs. Jones*, we threw the protecting mantle of the court around him, and said it should be inoperative as to him.— The principles of this decision are such, as with the lights I have on the subject, I am encouraged to hold most sacred; being given on demurrer to evidence, the opinion presents fairly as I think all the material facts involved. It will be seen that the consideration for which Jones' notes were given, was a bond for a large sum of money drawn by three persons, who are not parties to the latter contract, and payable to the plaintiff. That the bond contained a stipulation for 20 per cent a month interest, from the maturity till paid, and bore date in January, 1819 at which time there was no statutory restraint on the rate of interest, but that the statute of 1818, then in force, authorised all parties to contract for money or any other articles, at discretion, provided, it was done fairly, *bona fide*, and *in writing*. Al must admit that the law in force at the time of the execution of this contract must govern it; hence there could have been no usury in the original bond, nor is this contended for. But it was contended that the usury consisted in the sale of the bond in March 1822, at a higher price than according to the decision of June, 1824, could have been recovered on it. Yet it is clearly proven and conceded by all, that at the time of entering into this latter contract, all parties honestly believed on the advice of counsel eminent in the law, that exceeding \$15,000 more was due on the bond than it was sold for. Until more than two years after this contract was entered into, no other doctrine had ever prevailed in this state. No decision on the question was sooner made in the supreme court; circuit courts had invariably allowed the stipulated premiums, as was uniformly the case in voluntary settlements. That usury was involved in such a contract was never dreamed of, nor was it until after this contract was made that the question was raised, whether these high premiums were to be regarded as penalties, or as stipulated damages.

The defendant Jones, is the party supposed to have contracted to pay the usury complained of. He was not previously a debtor, so as to require *delay or forbearance*. He received no money at the time of the contract; nor is it shewn that he has yet received any. The evidence clearly establishes the improbability that he ever expected to receive any money under the contract earlier, or for any other purpose, than to enable him to pay the plaintiff the sum agreed. The evidence abundantly shows that Jones was actuated by motives of friendship to the original obligors but contracted on its own responsibility; that it was especially understood between the parties in interest, that Jones in making the purchase of the bond did not intend to profit by it, that he only intended to charge them the amount he intended to pay Thompson, and believed he was relieving them from a ruinous responsibility; because they afterwards failed to indemnify him, he instituted suit on the bond to secure himself. In the opinion delivered, this respondent held the doctrine, and maintains it still with equal confidence, that to constitute usury, in the execution of a security there must be an *intention in some of the contracting parties to give or promise, receive or secure more than the established rate of interest on the money lent or forborne*. Here it is shewn to have been conceded that Jones and Thompson, who are charged to have contracted the usury by estimating the bond at more

than it was worth, both believed, as did all others concerned, that more than double the amount was due than was agreed to be given. And this respondent insists in addition to more general principles, that the act of 1819, which is the statute under which usury in this case is attempted to be established, contains a clause which has a decisive influence on this question in favor of the decision. It is that the 'act shall not be so construed as to prohibit the sale of any bond or bonds which may have been *fairly and bona fide given and not given for the purpose of evading the provisions of this act.*' It expressly requires to constitute a violation of the act, 'it not an intention to contract for usury, at least a *purpose to evade the provisions of the act.*' Even a design to evade the statute, I believe has not been contended for; or if it has, under the evidence it cannot be believed to have existed. The memorialist, in his argument before the supreme court, maintained that Jones in making the contract, acted only in the capacity of agent, for the original debtors, and that the contract was to be viewed in the same light as if negotiated by them in person.

One of the Judges, if no more, or whose opinion the memorialist relies, directly reversed his doctrine, and maintained in delivering his opinion that if Jones had acted in the capacity of agent, the giving of new notes would have amounted to a legal and valid confirmation of the contract, and the full amount of the notes would have been recoverable, but that he regarded the contract as an independent purchase. This respondent did the same, and held that the bond being the entire consideration for the notes given, and as its value could have been precisely ascertained by the principles of the decision of 1824, made after the date of the notes, that decision was to be regarded as the standard of their value; he adheres to the principles of the decision of 1824, that the 20 per cent a month interest stipulated in the bond of January 1819, payable after its maturity, is to be rejected as *penalty*, not *usury*; and in lieu thereof, that the bond bore interest at the rate of 8 per cent per annum, under the 2nd section of the act of 1828; thus making a difference in a little, more than two years previous to the sale of the bond of more than \$20,000, on the principal sum of \$4,440. In the contract between Thompson and Jones, interest having been computed pursuant to the current doctrine of the day, at much more than 8 per cent a year, but not exceeding one fourth of the stipulated rate, this respondent admitted in the opinion, that part of the consideration had failed, and that it was susceptible of definite division, as the amount of failure could be precisely ascertained, by computing the difference between the premium allowed on the bond, and included in the notes and interest at 8 per cent. Admitting the contract not to have been usurious, the memorialist is not understood as objecting to the doctrine of the partial failure of the consideration; yet he says, no other Judge concurred in this opinion throughout, and still it prevailed. This objection, if solid, would apply with more force to others for permitting it; but it involves no mystery. Except on the point of usury, no diversity of opinion is recollected between this respondent and Judges Taylor and Lipscomb, and on that three concurred; so that his opinion was sustained by two others, though not the same Judges on each branch; hence, no other decision according to precedent or propriety could have been rendered. The memorialist is not understood as complaining that this decision is intrinsically erroneous; but only that it is repugnant to the decision of July, 1827, for which it is well known, he has no reverence. If it can avail him any thing, the general proposition will be admitted, that a construction on a statute by the supreme court becomes the law of the land, but it must be with the qualification, that the same authority for sufficient reasons may overrule it, and adopt a more correct rule of construction. This has been done in all ages and countries, without a question as to the authority. But it is not admitted that by the decision in the cases of Thompson vs. Jones, any former decisions have been overruled or departed from.

The supreme court of this State has never, within this respondent's knowledge, decided that questions of usury do not materially depend on the intention of the contracting parties. No such decisions are in this State, or he believes elsewhere to be found, and it is the doctrine this respondent has uniformly maintained. The general rule may well be admitted, that ignorance of the law does not excuse a party for the commission of a crime, or absolve him from the legal liability of his contracts, without impugning our decision in relation to usury. It has been sufficiently shewn

that questions of usury may, and do very often depend on the distinct principles. The memorialist speaking of the decision of 1824, which for the first time sanctioned the statute of 1818, as to allow interest on bonds, similar to that of Wade and others, at the rate of only 8 per cent a year, says, "this construction became the law of the land, and as such obligatory on the minority of the court on all future occasions." If he means to say as his language imports, that it only *then* became the law, he clearly surrenders himself, as the decision was made more than two years after the execution of the notes in question. It is not intended however to accept his surrender, or admit that a judicial construction can vary the true legal effect of a statute, except in cases where the intention is essential to the character of the act. These views are presented only to shew that these cases are peculiar in their nature, and loudly demand an exception to the general rule, that ignorance of the law does not excuse; that they are precisely such as the exceptions were intended to embrace, and of which this respondent has ever contended many do exist.

In the decision of July 1827, which appears to have been so afflicting to the memorialist, the following sentences in relation to mistakes in law, are abstracts from this Respondent's opinion then delivered.

"The maxims relied on by the appellees, are confessedly correct as 'general principles of law, yet they are subject to numerous exceptions, cannot I conceive be denied on authority. Relief may be, and has often been decreed in cases of mistakes *in law*.' In a subsequent part of the same opinion it is said that 'without entering into a particular examination of the various cases relied on, with respect to the effect of mistakes in law, which would produce a volume, I think it must be conceded that there has been considerable contrariety of decision among tribunals of high authority; and that the relief has depended much on the peculiarities of each case. With all the aid, however, that I have been enabled to derive from the unusual exhibition of talents and ingenuity in the argument, and from my subsequent examination, I am led to the conclusion, that the preponderance of authority is unfavorable to relief in cases similar to the present.'"

After referring to the authorities the same opinion proceeds: "In this determination I am considerably influenced by the consideration, that it may be considered certain, that the debtors expected at the time of entering into the contract, to pay the stipulated premiums at least until the maturity of the debts, and if they became chargeable with a larger amount than they originally expected, their disappointment arose chiefly, or entirely from their inability or disinclination to pay as soon as they expected. Also that at the time of these contracts the principles of relief in such cases had not been established by any judicial decision; that the debtors may have preferred making voluntary payments to litigating the questions; and that now to overthrow former settlements and adjudications on the authority of a subsequent decision, thereby giving it a retrospective operation, would introduce a precedent, tending to render private rights fluctuating to an alarming extent." These quotations from this respondent's former opinion will show a perfect accordance in principle between it and his subsequent opinion in the cases of *Thompson vs Jones*, which are charged to be so widely different with respect to the effect of ignorance of the law; the cases however in which the two opinions were respectively given, bear no analogy to each other. The cases of 1827, involved no question of usury; they were suits brought by the memorialist to recover back sums of money, which in some of the cases had been voluntarily paid according to the agreement, and in others had been collected on judgments at law on contracts entered into under the statutes of 1818, and the right to reverse these judgments barred by lapse of time or released by the parties; and as the records and decisions will show, were placed beyond any relief which could be afforded by any of the principles contained in the latter decision, as it was on a question of usury alone.

With these remarks, this respondent will pass to the only remaining charge against him. It is that after the same suits of *Thompson vs. Jones* had been remanded to the circuit court of Lawrence, for further proceeding, this respondent presiding in the court continued them on motion of the plaintiff's attorney, for the causes shewn. The memorialist having a bill of exceptions before him, containing the grounds of the continuance, pretends to present them to the Legislature—Were the

facts true as stated by him, perhaps the shewing would have been deemed sufficient by those best acquainted with the practice in this respect. But such is not the fact. With the means which the memorialist had to be correct, the record staring him in the face, it might have been hoped that he would state the case truly; but that seems not to have been his object. It is fortunate however that he was indulged with the most certain means of detection by this respondent, at his request signing a bill of exceptions, on a question of *continuance*, accompanied by the assertion, that he had no right to ask it. In his statement of the grounds of continuance, and which he says 'will appear from the bill of exceptions signed by his honor,' he charges that the respondent continued the causes to allow the plaintiff's counsel time to prepare to argue them a fourth time, on the same grounds he had already argued them upon three times.' He further states 'when the cause was called the plaintiff's counsel observed, that he had expected an additional plea of a partial failure of consideration to be filed, and could not prepare for trial until the plea should be filed.' He mentions no reasons why an additional plea had been expected, but states that the 'plaintiff's counsel then observed, that he had not expected that usury would be again relied on, and was not as well prepared to try the causes on that ground, as he wished to be.' It will be seen, that he studiously endeavors to pervert this later expression a second time; thus 'the counsel then observed that he was not as well prepared as he would like to be, and the causes were continued.' These several clauses of his statement of the grounds of continuance, have been extracted from the memorial in order that they may be compared with the bill of exceptions, and demonstrate the disingenuousness and vindictive spirit, by which he is instigated.—The bill of exceptions certified by the clerk, and just received through the memorialist himself, taken entire reads thus: 'The defendant's counsel insisted on a trial of these cases; and the plaintiff's counsel moved the court to continue them because under the *decision* of the supreme court at the last term, reversing and remanding them, he did not suppose that the pleas of usury would be relied on, but supposed the defendant would move to file other pleas resting the defence upon other grounds; and did not know until yesterday, when he was so informed by one of the defendant's counsel, that the defence of usury would be again relied on, together with a plea of partial failure of consideration: that expecting other pleas to be filed, and not being able to anticipate that usury would be relied upon, he had not prepared for trial.—The counsel for the plaintiff also stated that the clerk of the supreme court had not sent the opinion of the supreme court, by which the causes had been remanded, either to him or the clerk of this court; and that it was not known till some days after the commencement of this term that the opinion could be had during the term, when it was discovered that the Judge of this court had his opinion written in said decision in his possession, not having filed it yet with the clerk of the supreme court. The continuance so moved for, was opposed by the defendant's counsel; but the court said that the expectation of the plaintiff's counsel that other pleas would be filed under the circumstances, was a reasonable calculation; and if the plaintiff was not prepared for trial, and had omitted to prepare under that expectation, that the causes would be continued. The plaintiff's counsel then repeated, that he was not as well prepared as he otherwise would have been, whereupon the court directed the causes to be continued.' To show the right and inducement of the plaintiff's counsel to expect the trial of a different issue, and which was well known to the memorialist, and within the official knowledge of this respondent, it is necessary to refer to the conclusion of this respondent's opinion, as delivered in these cases in the supreme court. After disposing of the question of usury, which alone had been discussed, and treating the premium stipulated in the bond of Wade and others as a penalty, and making a slight reference to the effect and consequences, the opinion continues as follows: 'As this view of the case was not discussed, I refrain from further comments upon it, remarking only that if the amount of principal and 8 per cent interest was the sum due on the bond, and it alone was the consideration for the defendant's three notes for a large amount, the excess can be precisely ascertained, and the consideration severed with certainty, and perhaps the discount can be allowed in this action under a proper issue. At any rate, I am of opinion that *this issue does not present the true merits of the case*, and that justice would be rendered more difficult to attain, by

rendering judgment for the plaintiff upon it. Under a different issue, the evidence of the defendant would be inadmissible, but I think the other testimony sufficiently shews the consideration, and that the law of the case would be the same without it: or if not, the defendant by timely application, would be entitled to relief in chancery. — My opinion, therefore, is, that the judgment below must be reversed, and the cause remanded for further proceedings. A majority concur in the *result* on various grounds which they can best explain. By the decision of the supreme court as here shewn, the cause was remanded for the sole purpose of *permitting the defendant to have the issue changed*, to afford each party an opportunity to adduce all competent evidence they could, and to enable the defendant by a different plea, to avoid the excess of premium above 8 per cent a year. Hence, I considered, as I think all rational men would have done, that the plaintiff's counsel might reasonably have expected that another plea would be tendered, and the same not having been done, or any notice given him of the issue to be relied on, until the day before the causes were called, when one of the defendant's counsel informed him that the defence of usury would be again relied on, together with a plea of partial failure of consideration, and the latter plea being declined at the moment when the causes were called for trial, constituted in the opinion of this respondent, a reasonable excuse why he had not made the preparation which he stated he *otherwise would have made*. None will contend that reversing the judgment and remanding the cause, did not annul the evidence on record which had been demurred to: then why should the memorialist state, as he does, that preparation could only have been necessary to argue the same question of usury, unless with a view to deceive. There was no question of law that could be argued or decided, until evidence was adduced anew: it was impossible for this respondent to conjecture what evidence either party might wish to adduce, and it was equally so for the plaintiff's counsel to know what proofs might be required of him. This respondent was authorized to suppose, that the want of preparation had reference to absent testimony, and if the party making the shewing, was not as minutely interrogated as he might have been, it devolved not on him to do it. It is true, the opinion of this respondent on the question of usury, was so fully made up on two arguments in the supreme court, and so explicitly declared, that he did not expect that either party would wish to argue it again on the same facts, before him on the circuit; nor does he yet suppose it.

In addition, this respondent would submit to your honorable body, that he understood the practice to be, that where causes have been remanded from the supreme to the circuit court, for the purpose of allowing the issue to be changed for the benefit of either party, such party must at least tender the issue on which he would rely, or give notice of it to the adverse party in time for him to prepare to try it, else a continuance at the first term will be granted; indeed such cases have often been treated as suits at the appearance term, or continued on slight shewing. From the intrinsic nature of the subject, there is frequently the same necessity that the issue should be tendered, and known many weeks, or even months before the trial, that there was in the first instance, and in such cases six months is allowed by statute. As decisions on motions for continuances are not subject to revision in appellate courts, books of reports do not furnish a standard by which to test the authority for this continuance; but he would refer for the practice in this State, to the observation of the profession generally, and venture the opinion, that nine tenths will sustain the decision on the facts presented by the bill of exceptions. The exception being taken by the memorialist, it was no doubt drawn as favorable to his views as facts would warrant.

The memorialist also charges that in the case of Smith and Anderson, this respondent permitted himself to make another difference between Thompson and other suitors. In this however it is supposed he would not be understood to say, that this respondent did him injustice, as the decision was in his favor. He says the respondent "refused to continue the case then for the absence of the counsel employed, because other counsel ought to have been employed in time to prepare the case." Had the cause been continued perhaps this respondent would have interposed another obstacle to his removal to Orleans; this case was also in Lawrence; his respondent has not a distinct recollection of all the incidents, but as he recollects them, having his

memory somewhat refreshed by the recollection of others, they were substantially the following: The suit was in chancery, and of course all the evidence written and filed, as there was no intimation to the contrary. Mr Hopkins was understood to be the leading counsel for Smith the complainant, and Mr Smith, son of the party, assistant counsel. Mr Kelly was counsel for the defendant, and being anxious to have the court several days before the chancery docket could be taken up, and no jury being then in attendance, he requested that the cause might be then heard out of its turn. Mr Hopkins had already left the court. Mr Smith the assistant counsel, objected to the trial out of its order, and suggested that a continuance would be desirable, and stated as a cause the absence of the leading counsel. This respondent replied, that the cause would not be deemed sufficient, as the absence was voluntary, and there would be sufficient time for other counsel to prepare for the argument; and to accommodate Mr Kelly if not objected to by Mr Smith, this respondent agreed to hear his argument on that day, and to hear the adverse party on a subsequent day. Mr Smith declined giving his consent; this respondent then remarked to Mr. Kelly, that if he wished to depart, and would leave a written argument, he would examine it when the case should be regularly called. Mr Kelly left the court, having engaged other counsel to represent him; the case was disposed of in its regular order, when Mr Hopkins was represented by another counsel whom he had engaged for the purpose before his departure, and who in fact was in court when the argument and continuance were first spoken of. This and many other matters of which he speaks, perhaps this respondent should have treated with the silent contempt they deserved, but he preferred to explain them, to show the facility with which restive malice can pervert the most correct and consistent judicial conduct. These are the evidences he furnished of this respondent, having acted in obedience to some order current that was not visible on the surface and under the influence of reasons that he did not avow?

From the hasty reflection which this respondent has been enabled to give these subjects he has endeavored to detail the facts correctly; it is possible however he may be mistaken on some minor points. But he asks the benefit of such only, as can be established by the most inrefragable proofs now at command.

The memorialist says with reference to the Judges complained of 'that he complains not to the populace where an artful enemy might excite a prejudice against them.' This respondent could wish this declaration was more true than circumstances evince. But this respondent will not obtrude on this honorable body, the slightest notice of the incessant obloquy against the judiciary, with which the memorialist has endeavored to enlist the credulity of vulgar prejudices, since the decision of the supreme court in January, 1827. But as an additional evidence of the state of mind from which it has flowed, this respondent may be permitted to quote a sentence from a letter of the Memorialist to him of the 2d December last, in which he says in allusion to the continuance of the cases of *Thompson vs. Jones*: 'Previous to that time I had determined to obey the sentence of banishment pronounced against me on the 8th January, 1827; my aversion to controversy, and the powerful combination of the wealth of the country and the bench against me, rendered it desirable to terminate an intercourse that had become so disastrous to my hopes.' The memorialist refers to a decision of the supreme court in the cases of *Lewis and Orty vs. Ewing and Clemens*, and complains that the principles of that decision have been departed from. He does not use the courtesy to inform the Legislature, who composed the court at the time of either of these decisions, who concurred in them or delivered the opinions, or what were the reasons assigned. To have done so would defeat his purposes; it would unmask his designs, make his complaints too general and consequently less plausible; and it is an additional evidence of his not having confined his murmurs to those against whom he seeks redress. In reference to the case of *Stadifer vs. McWhorter*, he has pursued the same insidious policy: he says by the decision of that cause by the supreme court McWhorter was informed 'that the court had been sporting cruelly with him and did not intend him any practical relief by reducing the amount of the judgment by a former decision,' and charges that the decision, made the various principles settled in 1827 sufficiently elastic, to be drawn over the whole ground of controversy. Here also his purpose would

not have been subverted by naming the Judges who concurred in the decision thus assigned; he presents the name only of Judge Crenshaw. To these and various similar complaints applying with equal or greater force if any they have, to Judges not named, or of import entirely dubious, it cannot be expected that this respondent should answer.

The memorialist has said much of his pecuniary embarrassments and blighted hopes, to which this respondent can only reply, that if his thirst for employment has induced him to labor gratuitously and at his own expense, so as to impoverish himself, it is a matter of his own seeking. It never was supposed that any tribunal could be so fortunate as to satisfy the unsuccessful party in important and difficult controversies. If the wages of the counsel depend alone on the contingency of his success, it is equally impossible to satisfy him; when under honorable and independent stipulations for certain fees, more comfort and less interest in the results might preserve his conceptions clear; remove his temptation to excite clamor, and attempt to influence the legitimate course of justice, and influence the ultimate decision of cases yet pending; society might then have escaped many of the evils arising from vexatious litigation which evils induced the necessity of the common law penalties against *baratry, chicanery, and maintenance*.

This respondent does not envy him the fame, which his vanity has suggested he will acquire from this controversy with men in office. The coming ages in which he seems to expect his memory to live, would find nothing in a history of his deeds that has ever been admitted into the stock of any nation's glory.

*In the Supreme Court, July Term 1823.—Opinion delivered by Judge Sa. Jld.*

ROBERT THOMPSON vs. J. H. JONES.—This was an action of Assumpsit, brought by the plaintiff in error against the defendant on a promissory note. The defendant pleaded the statute of usury, and therein detailed the facts on which he relied to sustain his defence. Issue in fact being joined, the defendant introduced the testimony of other witnesses, and also his own evidence under the privilege of the statute concerning usury. To his evidence, the plaintiff demurred and the circuit court gave judgment for the defendant.

This judgment is assigned as the ground of error. One branch of the defendant's argument is, that the plaintiff could not legally demur to the evidence, unless he had expressly admitted on the record, every fact, which the defendant's testimony conduces to prove. The right of the plaintiff, under circumstances like the present, to demur to the evidence is believed to be well established by law, and the principle has long since been recognized by the decision of this court. Moreover, it does not appear that the defendant objected, or requested, to be excused from joining in the demurrer. We hold however, that the person demurring, concedes, by implication, every fact in favor of his adversary which the jury could reasonably infer from the testimony. Thus regarding the evidence in the case, the facts are, in substance, as follows: First viewing the case, as presented by the indifferent testimony only, it appears that the plaintiff held a bond on A. B. Danbridge, D. Wade and E. H. Danbridge, whereby, on the 31st day of January 1819, they promised on or before the first day of January next thereafter, to pay the plaintiff or order \$4440 for value received, with 10 per cent per month, interest on the amount thereafter until paid. Credits appeared on the note to the amount of \$1,700 expressed to be in part payment of the interest due thereon, dated subsequent to the maturity of the note. There was also an endorsement on the bond, by which the defendant acknowledged, that he had on the 14th March, 1820, (which is the date of the note here sued on,) purchased of the plaintiff the said instrument and had exonerated him from all responsibility respecting the payment of the same or any part thereof. This bond was the consideration of the note sued on, and of two others, all of the same amount, making together the sum of 6,300 dollars, payable by three instalments, with interest from the date, one of which having been given for each instalment. Each of said notes were also signed by two other persons, (the Eldridges,) as securities of the defendant, and by his procuration. The defendant appears to have been influenced to enter into this contract, from motives of friendship to the original debtors, and his apprehension of their great injury or ruin from the rapid increase of debt, as the rate of interest stipulated amounted to more than 10,000 dollars per annum on the 4440 dollars, and at the time this defendant contracted this rate of interest had been running more than two years. The plaintiff however, in conversation with the obligors, both before and after the maturity of their bond, said he would not exact the full rate of stipulated interest, that he would only require 5 per cent per month. The plaintiff on several occasions after the original note became due, expressed a desire that a new bond should be given, with additional security, in lieu of the original one, securing the principal and the less rate of



interest, which he had agreed to take. He sometimes intimated doubt as to the sufficiency of the obligors; at other times, expressed concern lest the high rate of interest would ruin them. On one occasion shortly after the bond fell due, being applied to by Wade, one of the obligors, to change the contract by permitting the original bond to be taken up, and new ones executed, he refused, and gave as a reason, that the law under which the contract was made, had been repealed; but he then renewed his promise verbally to exact not more than 5 per cent per month interest. But about two years afterwards, the plaintiff proposed to the same person, a similar modification of the contract, if additional security could be given; the defendant before purchasing the bond, expressed his apprehensions to one of the obligors that the plaintiff might recover of them the stipulated rate of interest, and said he would endeavor to procure it on the best terms possible. The negotiation ensued the terms having been previously agreed on. Wade was present when the contract was consummated. The plaintiff transferred the bond to the defendant as stated, who then executed the notes to secure the amount which he had agreed to pay the plaintiff for it. Previous to the contract it was distinctly understood, between the defendant and original obligors, that they were not to pay him more than he engaged to give plaintiff. After the purchase of the bond, the defendant held it as his own property; and Wade, (one of said obligors,) secured to defendant by a deed of trust, his portion of the sum which defendant had bound himself to pay. The other obligors refused to secure defendant, on the ground that he had agreed to pay plaintiff more than he could have recovered of them. Defendant then sued them on the bond, but dismissed his suit, under the impression that he could not recover as much as he had agreed to pay plaintiff. It further appeared that I. H. Landridge had paid plaintiff what he conceived to be his proportion of the debt, before it was purchased by the defendant, and that he was ignorant of the intention of the latter, to make the contract, until after it was made.

These facts appear from the testimony of indifferent witnesses. The defendant's own evidence does not vary the case, in any very essential degree, except that it explains the intention of the parties in making the contract. He states, in addition, that two or three months before he contracted plaintiff proposed to sell the bond to him. He at the time, declined purchasing it. Plaintiff requested him to speak to Wade, on the necessity of his securing the debt, saying he would make some abatement of the interest. Defendant asked him if the rate of interest as stipulated was recoverable. Plaintiff replied he believed it was, and requested him to take the bond and consult a Lawyer, and again urged him to purchase it, saying that the rate of interest was ruinous to obligors.—Defendant took the bond, consulted an Attorney, and was advised that the interest was recoverable. Defendant having returned the bond, advised Wade to give new security and take it up. He being unable to do so, defendant said he would try to get the bond on his own responsibility, but would require nothing more from the obligors, than it should cost him. After which, defendant applied to plaintiff and purchased the bond at 150 dollars, or 200 dollars less than he at first asked for it, defendant informed the plaintiff at the same time (one of the obligors being present,) that he did not intend to require of obligors more than he paid for the bond. Plaintiff said to defendant he might profit by the contract, as obligors were liable for the whole amount. Defendant informed plaintiff in what character he acted, that he contracted to benefit the obligors; and that he thought they were worth more than he had contracted to give for the bond.

This is all the evidence deemed material in the case, and the question is, does it sustain the plea of usury? and if not, what is its legal effect?

Inasmuch as the original contract was executed in January 1819, when there was no prohibition against usury, the bond which was the consideration of the note sued on, was free from all objections on the ground of usury. The statute relied on, is the "act to regulate the rate of interest," passed in Dec. 1819. The language is such as has been usually employed to prohibit usurious contracts. To constitute usury, there must be a loan, or forbearance, contracted for money or some other article, at a rate of interest, exceeding eight per cent per annum. I hold the rule to be universal, and one that will bear the strictest scrutiny, that to constitute usury in the execution of a security, there must be an intention in some of the contracting parties, to give or promise, receive or secure more than the established rate of interest on the money or other article lent or forborne. But it is equally true, if a security has been created for the purpose of raising money at an usurious rate, having never been negotiated in the course of business, and to be discounted at such rate of premium, by one ignorant of the circumstance, the instrument is nevertheless void as against the original debtor. Yet in such case, an innocent indorsee may recover of his endorser, the amount of money advanced thereon.

In support of the proposition, that an unlawful rate of premium must be contemplated by the original parties, to avoid the security, the argument may be used, which all concede, that a note drawn for a legitimate purpose, and regularly negotiated in the course of business may afterwards be purchased at a price much below the amount thereby cured, without violating the statute; and that the consideration may be paid presently,

on at a future day. It is also clear, that notes of the same description may be exchanged with impunity, with out regard to the equality of the sums. One may purchase an article of property on a credit, even at an extravagant price, and may immediately sell the same, in pursuance of his own previous design, for the purpose of raising a much less sum of money, and commit no violation of the statute, unless he vender of the article intended indirectly to effect a loan. The intention of the parties has been recognized in a thousand cases, by the highest tribunals, as the criterion for deciding questions of usury. And if a doubt could exist whether it is not inseparably connected with the nature of the offence or controversy, it is put to rest by a proviso in the statute referred to, and which is relied on in support of this plea. It is, that the act "shall not be so construed as to prohibit the sale of any bond or bonds, which may have been fairly and *bonafide* given, and not given for the purpose of evading the provisions of this act."

I conceive the true doctrine to be, that if a bond or note has been prepared for the purpose of procuring money, at an usurious rate, no matter under what other specious pretext, what the position or how many names appear upon it, and it be negotiated pursuant to the design, the security is void. No cunning or artifice in the management by the supposed debtors nor feigned ignorance of the person discounting it, can vary the case, provided the facts can be discovered. If a person to whom a note is offered for discount, be in fact ignorant of the circumstances under which it was created, he must ascertain at his peril that it has acquired validity by having been executed on a legal consideration; or if it prove otherwise he can only expect indemnity from the person from whom he received it; or under like circumstances, from a prior endorser. If the parties to a contract, intend indirectly to effect the object of usury, and believe they have used sufficient management, to evade the statute, but have misconstrued the effect of their artifice, then there is consistency in applying the forfeiture, and the maxim *ignorantia juris non excusat*, to him who designed to profit by the illegal contract. But to this case, I do not think either can have a just application.

It is most clear, that an unintentioned mistake in computing the amount of a sum due, would not constitute usury. Then why should an honest mis-construction of a penal stipulation for liquidated damages, stand on a different footing? Or, on what principle can difference be maintained on the question of usury, whether this contract was made by this plaintiff, the original obligors, or any other person? Or whether payment was made for the bond, at the time of the purchase, or promised at a subsequent day? I conceive there can be none.

Would any contend, that one who has a doubtful claim to any article of property, depending alone on complicated questions of law, by selling in good faith, a relinquishment of his claim to one equally cognizant of the facts, would thereby commit usury, provided it turn out that his title fails partially or entirely? If not, questions relating to penalties and stipulated damages, must (as contended by the plaintiff's counsel,) involve the same principle. Few questions in any country have presented greater difficulty or more doubtful construction, than the nice discriminations by which they are distinguished.—The true character of the stipulations of the bond for which this and the other notes were given as shewn by previous adjudications has admitted of the greatest variety of opinion among the most learned jurists of this state. Then shall the plaintiff forfeit his true debt, because he, as well as the defendant, construed the contract differently from our subsequent decision? This latter contract was made in March, 1822, before the great penalty questions here were seriously agitated. From the evidence, we are bound to assume the facts, that the plaintiff confidently believed when he entered into the original contract, that the stipulated premium was recoverable, and that both he and the defendant entertained the same opinion at the time of the execution of the note sued on.

It cannot be contended that if this plaintiff or any other person had purchased the bond at the same price, and made immediate payment, usury would have been committed. The contrary principle has been fully recognized, in the case of *Braham vs. Bieyes*, during the present term, and by many other decisions of this court. Nor would the case be different if the original obligors had paid off the bond at any time, with the same or a much larger sum. Then it follows irresistibly from these uncontested principles, that this contract was not usurious, unless it could be collected from the nature of the transaction, that the parties intended as the price of forbearance, to secure more than the amount, which they allowed to be due on the old contract, and thereby evade the restraints against usury. The very reverse of which is abundantly shewn.

Both parties believing the larger sum recoverable, I think the conclusion is obvious, that the plaintiff was influenced in making the contract, by a doubt as to the ability of the obligors to pay more than the 4 or 5 per cent per month, or even so much. It may well be presumed also, that he apprehended some danger of a conveyance of their property or other desperate means to defeat him entirely, if either of the exorbitant rates of interest continued to run. And is it irrational to suppose in addition, that under their threatened ruin, he felt some restraint of conscience? For though he at one time refused to

renew the bond with the original parties, assigning as a reason, that the law under which the contract was made had been repealed, subsequently he proposed to do this, nothing and had the advice of an Attorney, through the defendant, that the whole was recoverable. The defendant also having this advice, was greatly apprehensive of ruin to his friends, the obligors, and anxious to relieve them from danger, he declared repeatedly, that he did not intend to profit by the contract; that the obligors should have the bond at the same price. And it is evident that he did not expect to lose materially, if at all by it. He believed the obligors worth the sum he had contracted, and required only that they should secure him. And other considerations which I consider decisive on this question are, that the defendant was not previously a debtor, so as to require forbearance. He received no money at the time of the contract, nor is it probable he expected to receive any from the obligors, for any other purpose or earlier, than to enable him to pay the plaintiff. Nor is it shewn that he has yet received any money under the contract. I think no case has or can be cited, similar to the present which has been adjudged usurious. Hence I arrive at the conclusion, that the judgment below must be reversed.

But then another question arises, of equal difficulty. The notes given by the defendant and his securities for the bond included in the computation, not only the principal and the legal interest of 8 per cent, as due on the latter, but also three or four thousand dollars of the penalty therein stipulated. The form of the bond (notwithstanding the contrary opinions), presents a strong case of penal stipulation. It was a contract to pay the plaintiff, on or before a day certain "4440 dollars, for value received, with 20 per cent per month interest on the above amount thereof until paid." This was a rate of premium on the amount of the debt mentioned, exceeding 800 dollars, per month, or 10 000 dollars per annum. This premium was not to attach, except in the event of a failure to make punctual payment. And I yet adhere firmly and confidently to the opinion, which has with difficulty obtained, that the exorbitant premium thus stipulated, can only be regarded as penalty, to ensure prompt payment, whatever may have been the real fact, as to the intention of the parties in entering into it.

Previous to the usury act of 1819, if the parties consented to incorporate such premium into the body of the contract as part of the principal, and give it the same effect under the immunities of the Statute of 1818, I think they could do so. Perhaps, since the prohibitory act of 1819, where they evidently intended it as a compromise or confirmation, they may have effected the object in relation to such contracts previously existing. But if or among of this description he made the consideration of subsequent contracts, and the parties proceed under the conviction (as in this case,) that they are legally due and recoverable I hold the contract *pro tanto*, void for want of consideration; that it is clearly *inulturn pactum*. In the case of *Bahin vs. Reeves* referred to, we decided, that money paid on such consideration by one not a party to the original contract, could be recovered back. The principles of relief are equally clear where payment has not actually been made, but promised; and I think the advantage is in favour of the latter. The doctrine of defence for want of failure of consideration is the same, whether entire or partial, provided in the latter case the consideration consists of distinct items or parts, depending on different facts or principles, and susceptible of definite division and liquidation. This principle is fully sustained by many modern decisions. And where the relief cannot be had at law, by way of defence to the action, it may be sought in some different form.

As this view of the case was not discussed, I refrain from further comments upon it; remarking only, that if the amount of principal, and 8 per cent interest was the sum due on the bond, and it alone was the consideration of this defendant's three notes for the larger amount, the excess can be precisely ascertained, and the consideration severed with certainty; and perhaps the discount under a proper issue, can be allowed in this action. At any rate I am of opinion, that the issue does not present the true merits of the case, and that justice would be rendered more difficult to attain by rendering judgment for the plaintiff upon it. Under the different issue, the evidence of the defendant would be inadmissible, but I think the other testimony sufficiently shews the consideration, and that the law of the case would be the same without it; or if not, the defendant by timely application would be entitled to relief in chancery. My opinion therefore is, that judgment below must be reversed, and the cause removed for further proceedings. A majority concur in the result on various grounds which they can best explain. SAFFOLD.

It is hereby certified that the foregoing eleven pages contain a true and complete transcript of the opinion of the court, in the case above stated, as the same remains on file in my office.

Witness, HENRY MINOR, Clerk of said Supreme Court, this first day of Jan. 1829.

HENRY MINOR, Clerk.

[Three Cases.] *Robert Thompson, vs. Littleberry H. Jones.*

Be it remembered, that at the September term 1828, of the circuit court of Lawrence county, the defendant's counsel insisted on a trial of the cases, and the plaintiff's counsel moved the court to continue them, because under the decision of the supreme court

at last term reversing and remanding them, he did not suppose that the pleas of usury would be again relied on, but supposed the defendant would move to file other pleas resting the defence upon other grounds, and did not know until yesterday when he was so informed by one of defendant's counsel, that the defence of usury would be again relied on, together with a plea of partial failure of consideration. That expecting other pleas to be filed, and not being able to anticipate that usury would be relied on, he had not prepared for trial. The counsel for the plaintiff also stated that the clerk of the supreme court had not sent the opinion of the supreme court, by which the causes had been remanded, either to him or the clerk of this court; and then it was not known till some days after the commencement of this term that the opinion could be had during the term, when it was discovered that the Judge of this court had his opinion written in said decision in his possession, not having filed it yet with the clerk of the supreme court. The continuance so moved for was opposed by the defendant's counsel, but the court said the expectation of the plaintiff's counsel that other pleas would be offered, under the circumstances, was a reasonable calculation and if the plaintiff was not prepared for trial, and had omitted to prepare under that expectation, that the causes would be continued. The plaintiff's counsel then repeated, that he was not as well prepared as he otherwise would have been; whereupon the court directed the causes to be continued, to which opinion of the court the defendant's counsel excepted and tendered his bill of exceptions, and prayed the same to be signed and sealed and made part of the record, and the same was done accordingly.

R. SAFFOLD. [seal.]

STATE OF ALABAMA Lawrence county, ss: I, John Gallagher, clerk of the circuit court of Lawrence county aforesaid, do certify that the foregoing is a copy of the bill of exceptions filed in the above cause of Robert Thompson vs. L. H. Jones, at the September term, 1828, of said circuit court, and that in the foregoing copy of said bill, one line and part of another have been erased by me which ought not to have been inserted. Given under my hand and private seal at office, December 1, 1828.

JOHN GALLAGHER. [seal.]

*Judge Crenshaw's Answer.*

To the honorable the Senate and House of Representatives of the state of Alabama in General Assembly convened.

The answer of Anderson Crenshaw, one of the Judges of the State, to the charges exhibited against him and others by William Kelly, is respectfully submitted:

This respondent denying and protesting that his official conduct is reprehensible as charged in said memorial, has no hesitation in admitting the correctness of certain general abstract principles, stated by way of preliminary remarks in said memorial.

He admits in its fullest extent the right of the Representatives of the people, to examine the conduct of their public functionaries, and that such examinations when entered into with right motives, and prosecuted on sufficient grounds, must result in the preservation of the body politic. But this respondent cannot refrain from expressing the opinion that the present prosecution wants both these qualities so essentially necessary to the healthful exercise of such a measure.

When Verres, by oppression and extortion in his office of Prætor, had rendered himself obnoxious as a Judge, not a solitary individual but a respectable portion of the inhabitants of Sicily, appeared at the Roman forum, and invoked the justice of God and Man on the oppressor. And to descend to modern times, it is believed that scarcely a single instance can be found of an attempt to remove a Judge from office where the community or a considerable part of it, has not spontaneously moved to the attainment of that desired end. The reason is obvious; Judges are entrusted with the dearest interests of mankind, and any material violation of, or dereliction from official duty, as it is public, must be known, and will be felt with a degree of sensibility proportioned to its magnitude. But assuredly this is the first time that any one has been found shameless enough to avow, as a reason for the removal of a Judge from office, that he had been unsuccessful in the prosecution of suits, which should never have been commenced, and which this respondent for one, could not have decided in his favor, without a palpable violation of the law by which they were governed.

But this respondent will not entrench himself behind arguments of this kind; he will not, and does not ask the inquiry to be made, how it has happened that the memorialist alone, has been aggrieved by the decisions of the courts of Alabama; nor ask him to account for the phenomenon that while the supreme court of Alabama have

been consigning numbers to abject poverty, for the benefit of usurers that he alone has made the discovery. But waiving the objections to the accuser, he will proceed to shew that the charges so far as they purport to be based on facts, are either frivolous or utterly untrue; and so far as they rest on the opinion of the memorialist, touching the unfitness of this respondent for the station he now holds from want of capacity, it cannot be expected that he should stoop to a reply, considering the nature of the charge, and the quarter from which it comes; that question has been once settled by competent authority, and should it be deemed expedient again to make the inquiry, he is in the hands of his country.

So far as this respondent is charged in said memorial, the first allegation is, that he, with Judges White and Saffold, reversed the judgments in the cases of Thompson vs. Jones, with a knowledge that the opinion of Judge Perry, (then absent) would have produced an affirmance of the same.

The facts of the case are these, viz: at the January term, 1828, the causes were argued before Judges Saffold, Taylor, White, Perry and this respondent. On consultation, some of the Judges found a difficulty in coming to a conclusion, but to the best of his recollection and belief, so none, if not all the Judges, intimated the leaning of their minds, or what their opinion would probably be but has no recollection that Judge Perry expressed any decisive opinion; he however will here remark, that if a decision had at that time been made according to the opinions then intimated, the same judgment must have been given which was subsequently given in July. The court not being full, and some of the members present not being entirely satisfied, it was determined to take an advisory until the next term of the supreme court. The cases were accordingly again argued in July last, when the majority of the Judges being against the judgment of the circuit court, they were reversed. The gravamen of the charge under consideration is, that Judge Perry's opinion was known to the Judges, that if present his opinion would have varied the result, and that if such should prove to be the fact, the judgment ought to have been suspended until his voice could have been heard. It has already been stated that Judge Perry intimated an opinion after the first argument, but what his opinion would have been if he had heard the second argument, which was more full and satisfactory than the first, many new authorities having been adduced, this respondent cannot pretend to say; he has no remembrance or belief that he agreed to suspend the judgment until Judge Perry should return, and who did not return until after the court had adjourned, nor does he know that such an agreement was made by the other members of the court. If such an agreement was made within his knowledge, it would have been sacredly observed by this respondent, though he may be permitted to say, that with his present views of the rights of suitors in the supreme court, he could not readily yield his assent to any such arrangement. The parties appeared by their counsel: No objection was made against proceeding in the second argument of the case, nor was it until after the judgment of the court had been pronounced, that the memorialist requested it to be suspended until Judge Perry could pass upon the question. The motion to suspend was resisted by all the Judges present, and the judgments of the circuit court were reversed by a majority of them. What else, it may be confidently asked, could the court have done? Is the absence of a single Judge, over whom the rest of the court have no control, to suspend the business of the court? or to place the matter in a stronger point of view, can it be pretended that after a cause has been solemnly argued without objection, and the judgment of the court pronounced, a member of the bar has power to prevent such judgment from being entered up, and defeat its legal operation by the mere suggestion of a belief, that the opinion of an absent Judge, if present would vary the result?

But if the Judges complained of by the memorialist erred in the course pursued, Judges Lipscomb and Taylor must be equally guilty, as they were present and assented that a disposition should be then made of the cases: Nor is it easy to assign to the memorialist any correct reason or motive for selecting three of the Judges only as proper subjects of accusation when all present were equally guilty or innocent.

It is admitted that the rules of law and principles of decision established by the adjudications of the supreme court must govern all inferior courts of civil and crim-

inal jurisdiction, and should be respected by the supreme court until annulled or superseded by a subsequent decision, or by an act of the Legislature. But if the supreme court has not the right to depart from the rules and principles of a decision once made when discovered to be erroneous, then error would be immortal and reason and argument unnecessary.

Yet the respondent is not obnoxious even to this charge, as flimsy and fallacious as it may be; for whether he were right or wrong in his exposition of the law of the cases under review, he can at least claim the praise of consistency in them all. From the first decision in 1824, to the judgments now complained of, the records of the supreme court will show that this respondent has been uniform in his opinions and controlled by the same rules and principles in every case which has arisen under the celebrated usury act of 1818. As early as 1824, in the case of *Winston vs. Thompson*, when the question was first agitated, he was constrained to dissent from a majority of the court because he could not agree to the construction which they gave to that act of Assembly. Also, in the case of *Lewis and Oty vs. Ewing and Clemens*, he dissented from the opinion of the court for the same reasons; and likewise on the additional ground that ignorance of the law did not absolve a party from the obligation of his contract, and which doctrine has since been recognized by the supreme court to be the law of the land. (Judge Gayle alone dissenting.) In the cases decided in 1827, and in the cases decided at the last July term, viz: the case of *Staudifer vs. McWhorter* and the cases of *Thompson vs. Jones*, this respondent has acted on the same principles and been governed by the same rules so far as they applied, modified or controlled by the facts or other circumstances which exist in the different cases.

The principle of decision recognized by a majority of the court in the case of *Lewis and Oty vs. Ewing and Clemens*, has been since overruled with the concurrence of all the Judges, except Judge Gayle. And on this ground the memorialist has the assurance to predicate a charge for the removal of the Judges from office, and complains that on the faith of the implied promise of that decision (as he affects to understand it) he made contracts to a large amount, but that the supreme court failing to comply with this implied promise, that is the supreme court failing to sustain the principle of that case whether right or wrong in other cases, he has failed to realize his great contingent fees dependent on their successful conclusion, and that consequently his golden dreams have become illusory, and his contracts made under their influence proved ruinous.

But even for the dessolating inquiry thus inflicted by the restoration of justice to her proper habitation and a recurrence to the true principles of law, of which the memorialist so loudly complains, this respondent is totally blameless: He gave him no implied promise; he held out no false lure to blast his hopes and disappoint his fair prospects. Indeed the decisive language of the opinion expressed by this respondent in the case of *Lewis and Oty vs. Ewing and Clemens*, as well as in the case of *Winston vs. Thompson* in 1824, ought forever to have silenced complaint on this head against the respondent. With as little reason or propriety can it be urged that a decision founded in erroneous principles, should be sustained when discovered to be wrong because the memorialist was deeply interested in the event.

But to return to the cases of *Thompson vs. Jones*. It is strongly though falsely and maliciously urged by the memorialist that whilst the supreme court, in the celebrated cases decided in January, 1827, settled in the principle that ignorance of the law did not excuse a party from the performance of his agreement, and by that decision sheltered Thompson and others from recovery back of usurious interest paid them under a mistake of the law, yet that in these cases of *Thompson vs. Jones* when the same principle of law should have operated against Thompson it was made to bend in his favor. Now to attain to such a conclusion he must be superlatively ignorant of the law and the principles on which the cases were decided, or he must be actuated by some hidden motive peculiar to himself.

Whatever may have influenced Judges Lipscomb and Taylor in coming to the conclusion they did in these cases, this respondent, and he is informed and believes Judges Saffold and White were of opinion that ignorance of the law did not enter into the question then under consideration. A brief statement of the cases will show

that it could not. Wade and others, whilst the act of 1818 was in force made ~~the~~ bond to Thompson for a sum of money payable at a future time, to carry interest thereafter at 20 per cent a month. Now it is entirely clear that this contract was not usurious, nor is it contended that it was. But after this exorbitant interest had been accumulating for more than two years Jones became the purchaser of the bond from Thompson and gave his note with security for the principal of the bond and interest calculated thereon at about four per cent a month. This last arrangement was made after the repeal of the act of 1818, but at a time when the belief was universal that the whole amount was recoverable, and which belief had been sanctioned by the opinions of eminent lawyers as well as by judgments obtained in the circuit courts of the state. The supreme court in 1824, having decided that on notes or bonds like the one first above described eight per cent only was recoverable, Jones attempted to defeat the recovery sought to be had by Thompson on the ground of usury, and that the contract was void.

This respondent has always held, and he believes the doctrine to be universal, that usury cannot be committed without an intention to receive more than the rate of interest allowed by law at the time of making the contract, and it is also a well established principle of law that if a contract be good in its inception, no subsequent agreement to receive more than the legal rate of interest will make it void. How then can it be contended that this contract was usurious? Was there that corrupt intention which the law requires to the consummation of such a contract? Usury is considered and treated as a criminal act. On proof of the usury, the penalty is the loss of the debt; and is it not monstrous to contend that an act which was free from any corrupt intention at the time it was done should become so by a construction given to a statute years afterwards, and which was unknown at the time?

But even this argument is not necessary to the defence of this respondent; for although, when presiding on the circuit, he feels himself bound by the decision of a majority of the supreme court, yet, when sitting as a member of the supreme court, he cannot be under any obligation; for if he were the other members of the court would be in the same predicament, and if the principle be sound it would necessarily extend to all cases. Were the court to be governed by such a rule, a wrong decision made through ignorance or inadvertance, would govern all future cases under similar circumstances, and error would sit a perpetual incubus on the justice of the country. When sitting in a tribunal of the last resort a Judge is bound to respect the decisions of the majority and no more; his oath, and his obligations to his country and himself, imperiously require him to declare the laws as he believes it to be. And according to the opinion of this respondent in the usury cases in 1824, which has never been since shaken, even the first bond of Wade and others made to Thompson on the faith of a solemn act of the Legislature was good and recoverable; and by a necessary consequence the substituted notes of Jones to Thompson were also recoverable.

In the case of Standifer vs. McWhorter, the memorialist has not only presented an unfair statement of facts, but has sedulously kept out of view the important fact, that it was the unanimous decision of the whole court then present, except Judge Perry, and for the correctness of which the members of the court are censurable if any are, and not this respondent alone.

The facts of the case were, that Standifer had obtained a judgment against McWhorter, on a note made under the statute of 1818, and took out execution. In this aspect of affairs, and before the celebrated decision on the usury cases in 1824, the parties entered into an agreement by which Standifer remitted a part of his claim, and took McWhorter's notes with security payable at a future time, McWhorter on his part agreeing not to prosecute a writ of error on the judgment. But in fraud of this agreement, he did prosecute his writ of error, and cause it to be reversed. In the pressure of business, it is not always convenient, nor is it at any time necessary, for the revising tribunal to go further than the first error, deemed sufficient to to reverse a judgment. And the decision of January 1827, which established the doctrine, that a voluntary settlement or the compromise of a doubtful claim was binding on the rights of the parties, furnished a rule of decision by which the court were bound to come to the conclusion they did, and in strict accordance with the



opinions, this respondent has always held. But if it had been necessary, it could have been shewn that a court of equity could not aid McWhorter, by rescinding a contract fairly made and complied with by Standfer, when the very means urged for the rescision of the contract had been fraudulently obtained. Nor is the intimation given in the opinion, that McWhorter could have made defence at law, quite so absurd as the memorialist supposes, as humble as may be his conceptions touching the respondent's capacity; as one of the notes was not sued on until the first judgment was reversed, the matter could have been pleaded at law, either at bar or a recovery or in reduction of the amount. If McWhorter has been reduced to beggary in his old age, by the recovery of a debt against him, which in good faith he should have paid many years ago, he owes it in all human probability to bad counsel, and cannot impute it to the court, who decided his case on clear principles of law and justice, without knowing who he was, or how it would effect his fortunes. It is a monstrous doctrine that courts of judicature should decide the rights of parties litigant by a reference, either to their affluent condition or pecuniary wants, or should suffer their decisions to be controlled by the circumstance, that they will be impoverished or enriched; yet this doctrine is directly maintained by the memorialist.

He further charges, that the case of Patterson vs. Burford, at the circuit court of Lawrence, this respondent improperly rejected evidence offered on the part of the defendant, but which was admitted by consent of the plaintiff's Attorney. So much time has elapsed since the trial of that cause, that this respondent cannot pretend to state the facts, indeed he has no recollection of the case, but has not the least doubt but the facts in reality are very different from the representation of them made by the memorialist. But suppose for a moment, that in the hurry on a trial *à nisi prius*, evidence had been improperly rejected, was there not a toll and complete remedy by a bill of exceptions, and is it to be considered an extraordinary event, that a judge at *nisi prius* should admit or reject testimony improperly? On the contrary is it not the most frequent source of error, owing mainly to the necessity for haste in decision, but which more mature reflection proves to be erroneous? The most eminent Judges like all other men, are fallible beings, and may sometimes be permitted to err honestly and with impunity. But the decision was right, even according to the shewing of the memorialist.

It was perhaps not to be wondered at, that the memorialist should have presented facts which did never exist, or that he should have distorted, and given false colourings to the small number of truths sparingly inserted in his memorial; but who in a land of freedom could foresee that he would expect the Legislature of Alabama to be transformed into an inquisitorial tribunal, to take cognizance of the abstract opinions of this respondent, not acted on, or reduced to practice? These remarks are extracted from the respondent, by the charge of the memorialist, that this respondent as he had heard, held the doctrine, for which Judge Chace was impeached, that he was the Judge of the law, &c. He seems familiar with the history of impeachments. Suppose the respondent did hold such an opinion, has any injury resulted to any individual? Has, in any instance oppression been established, and the ends of justice been defeated?

But the respondent has no recollection of expressing the opinion as alledged, or any opinion about the matter, either in, or out of the court at Lawrence, and if any opinion was expressed, it could not have been intended to be in the broad and unqualified terms stated in the memorial. Moreover, this charge is too vague and uncertain to require a specific answer. This respondent did believe that, both physically, and morally, he was incapable of cruelty or oppression in any shape, that too much lenity in the administration of criminal justice might, with better reason, be alleged against him as a fault, and that at least for judicial despotism, he was deficient in that capacity and aptitude, the want of which in other respects, seems so much to form the burden of the memorialist's song.

The memorialist further charges this respondent, together with Judge White, of entertaining such frigid sophistical notions of the rules of law and the canons of property, that they are led astray from justice; and that independent of any specific objection, their general unfitness alone ought to exclude them from the temples of justice. From the latitude generally taken by the memorialist in his arguments on legal points, from his ignorance of the law, or his wish as evidenced by his conduct.



to bend the law to suit the circumstances of each particular case, the respondent is enabled to estimate the force and meaning of this charge; as it is equally clear that the memorialist considers himself and his opinions the proper standard by which legal excellence is to be estimated. If to endeavour to make the law of the land a fixed and unvarying rule for the government of human action, subject only to those modifications which the infirmity of human nature has rendered necessary, and the wisdom of ages has sanctioned, so that all may have their rights immutably secured to them, be reprehensible, then is this respondent liable to the charge of a frigid adherence to the law; and it does appear to him as it has done to some of the wisest and best men the world ever saw, that such frigid adherence was only the surest source of justice, but the only security of private rights and civil liberty. A contrary course, which no doubt the memorialist would greet with Hosannas, if the decision were in his favor, would transform the common law Judges into Chancellors, and unfetter the Chancellor from all the salutary restraints, which the wisdom of our law has imposed, even on the exercise of chancery jurisdiction. It would in effect enable the Judge to create a law for each particular case, and to measure out justice by the size of his conscience.

This is virtually what the memorialist wished the supreme court to do, in the celebrated usury cases, decided in January 1827, and in the late cases of Thompson vs. Jones, and in all cases arising out of the statute of 1818, subsequent to the first decisions in 1824.

Because Thompson and others had, under the statute of 1818, loaned large sums of money to individuals, and on faith and sanction of a solemn act of the Legislature, but doubtless one of bad policy, had obtained in the form of excessive interest, also large sums, the courts were invoked, not to dissolve contracts thus solemnly and freely entered into, but to cause the money voluntarily paid in virtue of such contracts, after the lapse of years to be refunded; to cause it to be refunded when it had been paid in consequence of judgments rendered, and an appeal or writ of error had been barred by the revolution of time, and even to refund the money, where the parties had not only made voluntary settlements, but had released all errors at law. But all the barriers thus interposed were to be overleaped, all the salutary restraints which had been accumulating for ages, were to be discharged, and in the pursuit of a phantom, which had been conjured up by the memorialist, under the imposing garb of justice, a vital stab was required to be given to the venerable institutions of our ancestors, and the well known law of the land to be laid prostrate. The Judges could not consistently with their oaths, and the duties of their station, do wrong knowingly, even that good might flow from it.

For this, has the gall of detraction been profusely poured on the head of the respondent by the memorialist; for decisions in conformity with the principles laid down, and for refusing to decide causes at his bidding, he now affects to consider as furnishing evidence of a state of dubious import, to which he says open hostility would be preferable; it is for this, that he is now accused of being frigid and sophistical in his conceptions of the rules of law and the canons of property.

As the charge of incompetency and unfitness for office, which in his wisdom the memorialist thinks of itself sufficient to warrant the removal of this respondent and Judge White from office, he has only to say, such a charge of itself, furnishes evidence so satisfactory of the folly, egotism and malignity of the memorialist, that reply cannot be necessary.

The respondent will however remark, that if frugal Heaven has denied him the aptitude and capacity to dispatch the public business, he thanks the same frugal Heaven that he has been also denied many of the aptitudes and capacities, for which the memorialist is supremely distinguished. He has no aptitude for slander and abuse; he has no capacity to stir up law suits, to excite litigation, to poison the peace and harmony of society, to build his hopes and make contracts on the expectation of realizing large contingent fees; and when disappointed by the operation of even handed justice, he has no capacity to denounce the ministers of justice, by preferring before this Honorable body a memorial, fraught with the deepest malice and falsehood, and clothed with sentiments and expressions which no mind could conceive, and no tongue could utter, but that of a man driven to desperation, and bent on his wicked purpose at all hazards.

All other facts, allegations, and conclusions, in said memorial contained, and not herein sufficiently answered, and which may be necessary to answer are denied to be true.

All of which premisses, this respondent most respectfully submits to the consideration and wisdom of this Honorable Senate.

*Judge White's Answer.*

To the honorable the Senate and House of Representatives of the State of Alabama in General Assembly convened.

The answer of John White, one of the judges of the state of Alabama, to the charges preferred against him and Judges Saffold and Crenshaw, by William Kelly.

Controlled by a due respect for myself, and this honorable body, I shall proceed, without noticing the style and manner of Mr Kelly's memorial, or questioning his motives to a dispassionate examination of the charges he has exhibited against me. The first, as summed up by the memorialist is, "that Judges Saffold, White and Crenshaw, a minority of the whole court, reversed the judgments of Jones at the suit of Thompson, when they well knew that Judges Perry, Taylor and Lipscomb were of opinion that they ought to be affirmed; and that if Judge Perry had been present, they would have been affirmed by the law of the court?" This charge, when properly understood, will be seen to amount to nothing, unless it be wrong for Judges to discharge their constitutional duties. The cases referred to, were first argued at January term 1828. Judge Gayle had decided them below, and, of course, could not sit. Judge Lipscomb was absent from necessity. They were obviously important, and upon consultation, thought by at least some of the court, to involve a degree of intricacy which would justify an advisari. When this determination was made known in open court, the gentlemen of the bar requested a reargument. This was agreed to. Towards the close of the last term, the cases were again taken up, rather out of order, at the instance of Mr Ormond, the gentleman associated with Mr Kelly, who was indisposed and wished to return home. Judge Perry was then absent, but Judge Lipscomb was on the bench, and with the exception of this exchange, the court consisted of precisely the same members that were present at the former argument. Here I will merely remark, in connexion with this fact, that Judge Lipscomb was of the same opinion which, Mr Kelly says, Judge Perry entertained, and consequently the cases were disposed, according to his own shewing, in the same manner as if they had been decided upon the first argument. For he does not pretend, nor can he suppose, but that the three Judges who were for a reversal on the last, were at least strongly inclined to that opinion on the first argument. As for myself, I have an impression of what Judge Perry's opinion was, but cannot now recollect when I received it. Some of the members of the court did not even know his opinion. But suppose it had been known to all, could they have retained the cases for that opinion? They certainly could not; because, by another argument his opinion might have been changed, and there was the same propriety in his hearing it as of any of the other Judges who had heard the first. But was it reasonable to calculate on a third argument in the same cases? It could not be. Then the court were not to blame, unless they induced Judge Perry to go away, under an arrangement that his opinion, if necessary to decide the cases, should be received, and they retained for that purpose. But, if this was done, I do not recollect it; nor does any other member of the court. Such an arrangement would have been without judicial precedent or sanction; and if made, it is fair to presume some one of the five Judges would have remembered it. In short, I am well satisfied, no such promise was ever made. A constitutional court being present, we were bound to hear and determine these cases. Indeed, no objection was intimated until the opinions of the Judges was made known to court. Then, and not till then, Mr Kelly, finding the cases had gone against him, signified a wish they should be retained for Judge Perry; alleging at the same time that he did not know his opinion. This was instantly repelled by the opposing counsel, and refused by every member of the court, including Judges Taylor and Lipscomb. Might it not then be asked, if blame is to be imputed for hearing and determining these cases under the circumstances complained of, why not attach that blame to all who concurred in the measure? If wrong in one, it was equally so in all. Can it be said, will it be supposed, that the offending does

not consist in the very act complained of, but in the high crime of deciding against Mr Kelly's wishes? To me this appears an obvious conclusion from the facts as they exist. And, if so, will this honorable body listen to such a charge for a moment?

But I am accused, with others, with inconsistency in deciding at one time that ignorance or mistake of the law would not excuse, and at another that it would. This charge, as made, I deny. True, I did decide that ignorance of the law would not excuse. And in this I am sustained, not only by the concurring views of all but one of the court then present, but by the elaborate opinions of a large majority of the ablest jurists in the world. And Mr Kelly, himself, well knows that nine out of ten of the gentlemen of the bar think with us. But whilst this is admitted, I still repel the charge of inconsistency. This principle mistake of law did not, in my view, affect the cases of Thompson and Jones. They turned upon the question of usury; and, for myself, I did not think that either the first contract or the second was usurious.

As for the case of Lewis and Otey against Ewing and Clemens, it was decided before I was on the bench, and I had no opportunity of concurring with, or dissenting from that decision. When the celebrated Big Interest cases were argued in the summer of 1826, the entire question was again opened by the course of the argument. Not only the correctness of the principle now alluded to, but even the construction of the statute of 1818 was brought to the view of the court. This the very brief of Mr Kelly prove; this the opinions of the Judges shew; and of this Mr Kelly cannot be ignorant. Besides, the case referred to 1824, was taken up with a cluster of other cases, but little argued, and hastily determined. In this state of things, I did not feel myself bound, by the principles of the case, to go contrary to the well matured conclusion of my own mind, in deciding subsequent cases.

The case of McWhorter, when properly represented and compared with preceding decisions, will be seen to have been settled by their principles. This was the unanimous opinion of the court who determined it, with the exception of Judge Perry.

I will now proceed to examine the charges made separately against myself, though not in the order presented in the memorial. It is alleged, "that at the fall term 1827, of the Madison circuit court, true bills for murder were found, one against John W. Hewlet, and the other against James W. McClung; that, although several days elapsed between the finding of the bills and trials, neither of the defendants were imprisoned, but were going at large, under a kind of honorable parole to the sheriff." As I have reason to believe that Mr Kelly has long previous to this time, been industriously engaged in circulating misrepresentations of my conduct, respecting these trials, I hope to be indulged in giving a full detail of the circumstances, both in justification of myself, and the better to explain the true temper of these charges. The facts which I will state shall be proven, if required, by gentlemen, whose testimony, even Mr Kelly will not venture to dispute. Hewlet was charged with murder; and had been bailed by Judge Taylor. When the bill was found, I was notified of it, by the solicitor, in the usual manner. I ordered the defendant into custody. Judge Clay, as his counsel, remonstrated. He stated the fact of his having been bailed by a circuit Judge, and argued from it, that the defendant had been guilty of an inferior species of homicide, or that the proof of his guilt was not evident, or the presumption thereof strong. To this I answered, that the finding of the bill, so increased the presumption of guilt; that the law, and the practice of the courts required me to commit, especially as a trial would be had in a few days. Upon the counsel still insisting, I observed, that the law was the only rule of my conduct; that it must be meted out alike to all; that I could not, and would not make distinctions. The defendant was then again ordered into custody; and as I believe, was taken and continued in custody till his trial; which came on in a few days, and he was acquitted. The case, at worst, from the proof, was only manslaughter.

The state against McClung, was a case calculated to awaken the deepest interest. He had long been a resident of Huntsville, and a respectable member of the bar.— He was in the legislature the previous session, and again before the people. Mr. Wills was the editor of a newspaper in the same town; and had published several pieces, tending as was supposed, not only to darken the political prospects of Mr. McClung, but, as he thought to disparage his standing as a man. My official avocations, a temporary absence from the state, occasioned by the sickness of my fami-

ly, and a disposition which I have ever cherished, since on the bench, to stand aloof from political controversy, combined to prevent my reading the publications which passed between the parties ; and left me comparatively ignorant of their dispute. I had, however, learnt enough to know that the trial of McClung might be one, which would rouse into action, the strongest feelings for and against him. The painful event which led to the trial, was communicated to me, immediately on my return from the summer session of the supreme court, 1827. The fifth circuit had been assigned me. The heavy and responsible duty was before me, and could not be avoided. I readily admit, that I have never presided where the life of the humblest human being was to be disposed of, without feeling the solemnity of my situation, and the strongest obligations to proceed with the strictest caution, in every step, tending to affect such fearful destinies. But, in this case, though from a sense of duty I avoided an acquaintance with the facts, and did not know its real character, there were circumstances still unaltered calculated to render the approaching trial unpleasant to my contemplations. I had been for several years at the bar with the defendant. The usual friendships growing out of that relation, had arisen between us. His family was respectable, and one of his brothers, now no more, of a most amiable and interesting character, had resided in the same village with myself. Not knowing the features of the transaction, I could not anticipate the result. I knew then, as well as now, that I had a few implacable enemies, whose malicious spirits would feast with satanic pleasure on any apparent impropriety of conduct, and who would gladly avail themselves of the excitement which was to be expected, to give currency to misrepresentations of my motives and actions. In this state of things, and with this prospect before me, I knew there was but one course, which if pursued, though I might be censured, I would not deserve it. This was the line of duty ; and this, permit me to say, in humble reliance on divine aid, I resolved to follow, determined, on the one hand, not wilfully to yield the rights of the state, nor on the other, to permit apprehensions, of unjust censure from a few embittered foes, to cause me to withhold from the accused, any privilege which the mild benignity of the law might allow him. Mr James M. White, the regular solicitor, was the near relation, and intimate friend of Mr McClung. I had heard that he did not intend to prosecute. In that event, I knew a solicitor *pro tem* would have to be appointed by the court ; and as I had no power to coerce, I apprehended difficulty in prevailing on a suitable member of the bar to officiate. I took every proper means to ascertain if any had been spoken to by the friends of the deceased. Mr White and myself were together at Blount, Morgan and Jackson courts. Nothing however passed between us on the subject, until on our return from Jackson to Madison court. I then, for the purpose of knowing certainly his intentions, and learning if possible who would most probably act in his stead, introduced the conversation. He told me, as I expected, that he could not prosecute or draw the indictment, but on my suggestion agreed to sign it to prevent difficulties. He also told me, it was reported Mr Kelly had been requested by the friends of Mr Wills to appear for the state, but that he did not know that the report was correct. It was then arranged between us, that the case should not be brought officially to my notice, before the second day of the court, that farther opportunities might be had of ascertaining who would prosecute. On Tuesday morning Judge Clay, I think, named the case to me, in open court, and reminded me of the necessity of appointing a Solicitor. I still had not learnt certainly of any that would act ; but having heard from Mr White and others, that probably Mr Kelly might, and knowing that though he was a member of the legislature, it would not be necessary for him to be there, until three weeks from the day immediately previous, I requested him to prosecute. He refused, alleging that he might have to leave home before the trial could be finished. I then desired several other gentlemen to officiate, among whom were Mr Birney, the former solicitor, Mr Brandon, and Maj. Pean. They all declined. About this time Mr Hutchinson came into court. I asked him to prosecute. At first, he seemed to hesitate ; but soon replied he would let me know in a few minutes. After retiring for a short time with Mr Kelly, he returned and informed me that he would at least attend so far as to advance the case before the grand jury. Whilst on this part of the subject, I will name that afterwards, upon hearing from Mr Hutchinson, that himself and family were indis-

ed, and that he had much other business to attend to, I did, at his request, make two different efforts to get assisting counsel for the state; and ultimately, on his suggestion, appointed Mr Paul, a gentleman of the bar from Tennessee, to aid in the prosecution. At the regular time for discharging the grand jury, I was informed, that this case not being ready, their attendance would be necessary on the following week. I directed them to meet again, which they did, on the next Monday. The day following, Mr Hutchinson informed me, that the bill was found against Mr McClung. Without any direct request from the solicitor, I immediately ordered him into custody. His counsel insisted that he should continue on bail, and that Mr Hutchinson had not even requested his commitment. I told them that no other construction could be put on the information just received, than that of a request to commit the defendant; that at the same term in Hewlet's case I had distinctly said what I conceived to be my duty and what should be my conduct; and that I could not vary, unless substantial grounds were shown. Bail was offered in the sum of two hundred thousand dollars; but, governed by a sense of duty, I refused; and that too, notwithstanding I believed a regard for his character would have prevented the defendant's leaving court even if he had been set at liberty without recognizance. — About this time, opposition ceased. The house was crowded. The defendant was said to be present. Taggart ordered him into custody, and understood the order was obeyed. At this period, Gen. Adair handed me the notes of the evidence taken by the magistrate who had bailed his client, and intimated that they might again apply to bail him. The business of the court was weighty and important, and required my constant attention. I occupied a room in the upper story of a house in sight of where the court sat, and remained in this room almost constantly, except when engaged in business. I did not take necessary exercise, and denied myself even the ordinary comforts of social intercourse. This course I resolved on before I reached Huntsville, believing it most effectual to avoid even the appearance of suspicion or impropriety. I did not conceive myself bound to keep the key of the jail, to institute inquiries into the conduct of officers without suggestion of impropriety, or to quit the business of the court to hunt down the defendant or any other man. I had ordered him into custody, and believed that order obeyed.

Respecting the propriety of dismissing the Writ of *ne exeat*, in the case of Lucus vs. Pope and Hickman, I answer, that Mr Lucus has prosecuted his writ of error, and the case is still pending in the supreme court. If I erred, that error will be corrected in the usual manner, and in the way known to the law; but if my judgment was correct, it must be affirmed. Should however Mr Kelly, which I cannot apprehend, be able to procure at the hands of the Legislature, a censure of my conduct in this matter, and thereby, in one aspect a reversal of my judgment, and the supreme court should afterwards affirm it, there would then, to say the least of it, be an awkward conflict between the Legislative and Judicial departments of Government. And what can the memorialist expect to effect by this? Surely he will not treat this honorable body with so much disrespect, as even to insinuate, that he entertains the vain and idle hope of intimidating the highest tribunal of the country, in the exercise of their solemn and important functions, by the censures which the legislature may possibly pass upon my conduct. Should such be his wish, or such his design, it must be spurned at with honorable disdain, by every virtuous bosom. And indeed, though aside from his enviable hatred of myself, I cannot divine any other motive. I feel a delicacy in even intimating in the presence of the Legislative councils of my country, that such may be his wish. This view of the case alone might be sufficient, but I will add, that if in dismissing this writ of *ne exeat* I was wrong, it was an error of judgment, and I still entertain the same opinion. Though Maj. Hickman was a resident freeholder, he could, by the Statutes as they then existed, have been held to bail in the suit at common law. Thus the plaintiff having failed to do, at the commencement of his action, he could not afterwards claim the interposition of a court of equity to bind Hickman to bail, though he was about to remove, and the only solvent defendant as alleged, and though he might afterwards have to sue in another State on the record. The writ of *ne exeat* is a high prerogative writ, affecting the liberty of the citizen, and never resorted to but in cases of extreme necessity, and such as did not in my opinion exist in that instance. It is also worthy of remark, that Hickman

designed removing to Nashville, only about one hundred miles from where the plaintiff resided. My opinion, though complained of, is supported by the best authority. I had previously examined the same question at chambers, and refused a similar application upon even stronger grounds. But if I erred, I shall be happy to have that error corrected by the tribunal to which the constitution and the law have assigned the duty.

In reply to the charge, that I disobeyed the mandate of the supreme court, on the first trial before me, of the case of *Lucus* against *Pope* and *Hickman*, I state, that the first declaration filed by *Lucus*, contained several counts, and all the evidence upon which the supreme court first determined the cause applied to, and supported the facts stated in the special counts. The bill of exceptions, which constituted a part of the record on which the supreme court first acted, did not state that it contained all the evidence which was given on the trial in the circuit court. The supreme court decided, as I understand its opinion, that the failure of *Lucus* to offer to return the note to *Pope* and *Hickman*, which he had received from *Pope*, in payment of their debt, as soon as the forgery of one of the signatures to it was discovered or alleged, exempted them from the liability claimed of them; and that opinion also holds, that such an omission would have had the same effect in their favor if the note had been an entire forgery. From the mandate of the supreme court, it can never be ascertained what principles have been settled, or for what purpose a cause has been remanded. These can be found only in the opinion of the court which decided the cause, and authorized the mandate to issue. The authorities of the most respectable tribunals, which were relied upon by the counsel of *Pope* and *Hickman*, brought my mind to the conclusion, that a decision of the supreme court, is final and conclusive in relation to the cause of action which it determines, and that I had power to determine such causes of action only between the parties, as had not been determined by that court. To ascertain what had been determined by the supreme court, I resorted to its opinion, and found the principle maintained, that the omission of *Lucus* to offer to return the note, as soon as it was discovered as alleged to be a forgery, absolved the defendants from responsibility. The object which I conceived the supreme court had in view, in remanding the cause, was to enable the plaintiff to try any cause of action, different from that connected with the payment of the note. There were several common counts in the declaration, and as the bill of exceptions did not state that it contained all the evidence which the plaintiff had given on the trial of the cause, the supreme court could not have known, but he might have testimony of a cause of action, admissible under the common counts, and entirely distinct from that of which the payment of the note formed a part. As the supreme court had decided upon the cause of action, of which the note paid by *Pope* to the plaintiff was a most material point, my best judgment, aided by the authorities I examined, was opposed to the power claimed for me by the plaintiff, to adjudicate upon a cause of action from which the supreme court had decided he could receive no benefit, and authorized me to determine such causes of action only as the record and the opinion of the supreme court showed had not been decided by it, and the plaintiff might prove under the common counts in his declaration. I erred in that judgment. I erred in common with other judges, whose talent, learning and integrity, have never been questioned. The doctrine is, I think, well settled upon authority, that a judgment may be final upon a cause of action, contained in one count of a declaration, and not final as to another count; because it has not adjudicated upon the cause of action alleged in such other count of the same declaration.

Having submitted this short view of the case, it is for the Legislature to say, not whether I erred in this decision. (for as the judgment was reversed, it is perhaps decorous to admit it,) but whether that error was of such a nature as will justify the imputation made against me by Mr. Kelly. He at least intimates, that I must have been influenced by an undue desire to promote the interest of my friend, Maj. *Hickman*, who had been greatly instrumental in electing me to the bench. Such an imputation as this, if noticed at all, might well provoke angry reply. I shall however answer it, and that too, in a manner mild and respectful to this House. But sincerely I may be allowed to appeal to the general tenor of my life and character, in full

refutation of so base a charge. None who know me, I am justified in saying, can or will believe it for a moment. Indeed it would seem too weighty for the rancorous spirit of Mr. Kelly himself. Even he admits that when off the bench, I have some pretensions to integrity; and this he does though it involves him in manifest absurdity. For a man who could wilfully do wrong, from the motive he ascribes to me, whilst under the solemn obligations of an oath, and in full view of the public gaze, must be fearless of both heaven and earth, and utterly destitute of virtue. I will not however, stop with the refutation which my character would give to this groundless charge, but proceed to show that it is untrue, and Mr. Kelly must have known it. The case of Nance and Co. for the use &c. vs. Pope and Hickman, was originally decided in the circuit court, long before I was on the bench. Maj. Hickman was my neighbor and friend. I often heard him speak of the case, and always understood he considered himself indemnified. This indeed was a fact of public notoriety, and Mr. Kelly could neither have been ignorant of it himself, nor supposed me so; for the indemnifying bond was made a part of the record, and when the case was ultimately decided against the defendants, Col. Pope, one of the securities to the bond of indemnity, actually settled the judgment. This was done in July last, as will appear from a receipt, which I now have in my possession, ready to produce when required. Maj. Hickman then was a mere nominal party to the suit, and it is impossible that Mr. Kelly could have been ignorant of that fact. If therefore I departed from my duty to favour my friend, it was when I knew he could not be benefited. I then respectfully submit to this honorable body, to determine whether this charge is not without the least shadow of foundation, and whether Mr. Kelly has not made it with a full knowledge that it is so.

Propriety forbids that I should notice the objections of the memorialist to my intellectual qualifications for the office which I hold. But I will merely observe that his reasons, taken from the crowded dockets said to be left behind me, were probably mentioned more to excite prejudice than for any other purpose. The allegation, to the extent made, is not correct. With myself, as with others, it has sometimes happened, that the dockets could not be cleared. But every intelligent man, who has noticed the situation of business in our courts, must know that this is often unavoidable, without harrying over cases in a manner detrimental to the rights of the parties. Suits, from their diversified character, must necessarily require different periods of time to try them. Some will occupy several days, when perhaps fifty or a hundred others of a plain nature might be disposed of in the same time. It is also known that in the ordinary course of business, the most litigated suits crowd to the front of the dockets. If they, or a large portion of them, are continued, it is easy to get through; but if tried, a few of them, with the states business, will occupy the whole term. It is then apparent that the getting through dockets depends more on the number and nature of the suits and their preparation for trial, than either the industry or capacity of the Judge. I might indeed, have often passed over dockets, in a way which would have gained me the applause of the multitude, but such a course would have been inconsistent both with my own duty and the rights of suitors. That I have been reasonably industrious in the discharge of my official duties, my enemies will admit. And I have yet to be convinced that the chief merit of a judicial officer consists in the speed with which he hurries over, or rather passes by, the business of a court. Though expedition is desirable, yet there is an extreme in this, as in other things; and great injury often results from too much precipitation. Caution should be used, and sufficient time allowed for the disposal of important interests in courts of justice. But while I say this, as explanatory of the principles upon which I have acted, I still deny the assertion of Mr. Kelly, to the extent he has made it, and assert that I have uniformly disposed of the dockets where I have presided, except when prevented by circumstances which could not be controlled.

Having now answered the charges of the memorialist, as far as duty requires, or propriety would allow, I submit them to the candid and impartial investigation of this honorable body, and will cheerfully meet that investigation, in the way which they in their discretion may prescribe.

*Pope and Hickman vs. John Nance & Co. to the use of J. R. Lucas, December Term, 1824. Taken from the circuit court of Madison county.—The facts as collected from the record in*



This case, so far as they are considered material, seem to be, that Pope and Hickman purchased from John Davis, Jr. sundry negroes, and in part payment executed their note bearing date 6th day of Feb. 1819, payable to John Brahan or order, \$6,662, 9 months after date. This note Brahan endorsed in blank, and Davis endorsed it to John Nance & Co. the defendants in error. In the spring of 1819, the firm of Pope and Hickman was dissolved, and Hickman assigned all his interest in the copartnership effects to Pope. In Dec. 1819, John R. Lucas, one of the firm of Nance & Co. with a full knowledge that the copartnership of Pope and Hickman had been dissolved, applied separately to Pope for payment of the above mentioned note, when an agreement took place between them, that Lucas should take the note of S. D. Hutchins & Co. and Simon Turner, endorsed by Egbert Harris, for \$6,403, dated the 22d day of December, 1819, payable the 1st of August, 1819, in part payment, and that Pope should pay him the balance. This agreement was carried into effect. Lucas received the note from Pope, and the balance in money, and gave up to Pope, the note of Pope and Hickman, which note was cancelled by Pope striking a pen across the signature thereto subscribed; and so cancelled, it remained in the possession of Pope. It was declared by Pope that he would not be responsible for the solvency of neither the makers nor endorser of the note paid over by him to Lucas, and positively refused to endorse it, but represented the firm of S. D. Hutchins & Co. to be merchants of good credit, and Simon Turner and Egbert Harris to be respectable planters. At the maturity of the note, Lucas commenced suit as assignee of Harris against Hutchins and Bradford his copartner, and against Simon Turner. The suit abated as to Hutchins by his death—judgment by default was recovered against Bradford—Turner alleged that his signature to the note was a forgery, and plead non assumpsit on oath; verdict and judgment was in his favor on that plea. Pope was apprised before the commencement of the suit, that Turner had refused payment on the ground of alleged forgery of his name, and agreed it would be well to sue him, but made no acknowledgment of liability; nor is there any evidence of fraud on his part. So far from it, there is evidence that he had first offered the cotton for which he had received the note, to Lucas, before he sold it to S. D. Hutchins & Co. No notice was given to Harris, the endorser, no proceedings against the representatives of Hutchins; and no steps taken against Bradford after the judgment by default had been rendered against him. This suit was brought on the cancelled note originally given by Pope and Hickman. On the trial, the presiding Judge charged the jury, that if they believed the signature of Simon Turner to be a forgery, that they must find a verdict for the plaintiff. The jury returned a verdict agreeable to the charge of the Judge. Several exceptions were taken on the trial below, and various points growing out of them have been argued. But it is believed that the most important will be arranged under the one growing out of the charge of the court to the jury. To the facts connected with this point, I will endeavor briefly to apply the law, and in the outset I must declare that my researches for a case in point, have been unsuccessful. But I believe that principles have been laid down in cases bearing some analogy to the one under consideration, that when applied will strip it of every difficulty. The adjudged cases all go to support his rule, that if a note of a third person has been received in payment of a precedent debt, and it prove to be a forgery, the plaintiff can resort to the original consideration and commence suit on it, although no payment had been made. This is a general rule on which the following restrictions have been imposed. The plaintiff must return the note as soon as the forgery is discovered; he must place the defendant in the same condition he was in before; any negligence on his part, or failure to comply with these restrictions will discharge the defendant from all liability if he acted in good faith, although the note received in payment may be a forgery. In the case under consideration, the note is not alleged to be an entire forgery. Only the name of one of the makers is a forgery; but putting it on the strongest ground in favor of the plaintiff below, that is as a forged note, it was incumbent on the plaintiffs to have tendered it to Pope so soon as the forgery was discovered. The fact of payment being refused on the alleged ground of forgery, should have instructed the plaintiffs to act with circumspection, and to have avoided every thing like negligence. But it seems suit was commenced in the name of Lucas, as assignee of Harris, without offering to return the note to Pope. Again, it was assented that Pope and Hickman should be placed in the same condition they were in before they paid away the note. The plaintiffs did not give Harris notice of the nonpayment, by the makers, and by this neglect they have released him from all liability to themselves, or to Pope and Hickman, to whom he was certainly originally liable as endorser. It will then be perceived, that it is wholly impossible, that Pope and Hickman could be restored to their former situation, as regards the note paid away. And if they cannot, they are discharged from all liability.

Again, although the name of Simon Turner to the note is a forgery, it does not follow as a necessary result, that the note was of no value. It cannot be judicially known, that Hutchins and Bradford were insolvent, and we do not know but the money may have been collected. There are cases in the books of bills of exchange, accepted and paid over in discharge of a precedent debt, and it has afterwards appeared that the drawer's name had been forged. In such cases, it has been held that the acceptor is not discharged, and if the holder of the bill does not return it as soon as the forgery is discovered, he is supposed to rely on the solvency of the acceptor, and the party who had paid it away, is



wholly discharged. Those cases differ from the one under consideration in this, that in this the name of one of the drawers only is a forgery, and the instrument not wholly void. The liability of Hutchins and Co. and the endorser Harris, who may be considered as a maker of a bill of exchange, was not destroyed by the forgery of Turner's name. The plaintiffs were bound to use diligence, in protecting both their own interest, and the defendant's, in relation to the note received in payment. By failure to do so I am clear, that they have lost all recourse on the defendants. It seems then, that the charge of the Judge on the law is erroneous, and the judgment must be reversed, and the cause remanded for further proceedings, and in this opinion the court unanimously concur.

After the argument and the decision of the court in this case, I examined with a good deal of interest, the opinion of the supreme court of the United States in the case of the United States Bank against the Georgia Bank. I find that the principles here laid down, have been fully recognized by that court. But in that case they seem to have gone much further; they seem to rest the question almost entirely on the understanding of the parties. At the time the note is received, if the parties themselves considered it as payment, and not security for a payment of a precedent debt, the note would be recoverable at the risk of the party so receiving it in payment. It is true, that it has not been so decided in express words. But both the reasoning of Judge Story, and the authority on which he rests his opinion, go strongly to support this position. If the intention of the parties is to determine the character in which the note was received, there can be no doubt but it was intended as an absolute payment of the precedent debt and not as a security for such payment; then why was the note of Pope and Hickman the evidence of the precedent debt given up to Pope and cancelled? why did Pope refuse to endorse? why pay the balance of the original debt in money? why did Lucas after it had been alleged that Simon Turner's name was forged go on to sue him on the note? All these are circumstances conclusive in my mind of the intention of the parties to consider it as payment. A. S. LIPSCOMB

*Judge Crenshaw's reply to the additional charge preferred against him by William Kelly.*

To the Honorable the President and Members of the Senate of the State of Alabama.

The answer of Anderson Crenshaw, one of the Judges of the state, to the additional charge preferred against him on yesterday by Wm. Kelly, respectfully represents, 'That it is not to be wondered at that the complainant should now resort to all the means in his power to remove this respondent from office; but he did not foresee, nor expect that after the original charges had been fully answered, he would so far depart from the regular order and course of business, merely to accumulate an additional charge against this respondent.

He states that he has been informed this respondent "failed to hold the circuit court of Marengo at the last term, and that he is unapprized of any excuse for the failure." On his mere information he prefers charge after charge, and thus furnishes an additional proof of his deep rooted malice, as well as of the fallacy of his complaint.

May it not be confidently asked, by what authority he claims the right of calling on this respondent to inform him of the reasons why the court was not held? Is he the guardian of the rights of the people at large, and clothed with exclusive power to supervise the conduct of the Judges? Is this the first time that a Judge has failed to hold a court without accounting to him or any other person? As the citizens of Marengo county, and the members of the bar practising at its court, have made no complaint, this respondent might excuse himself from giving the complainant the desired information. But if it be so essential to the public good, that he should be apprized of the reasons for the failure of the Court at Marengo, he might have readily acquired the information (if indeed he has not already) from a number of persons now in Tuscaloosa, from several members of the Legislature, and from at least two Honorable Senators without resorting to this tribunal as the medium of communication.

Not waiving these objections, this respondent hastens to a statement of the facts, which are these:—Whilst holding the court at Perry he received an application from a member of the bar, representing a large number of the suitors in Marengo court, requesting that there might be no court in course, in order that a special court might be held at or after the close of the supreme court; that little or no business of consequence was then ready for trial; and, but a small portion of business could then be dispatched—that the late sheriff had runaway, leaving the affairs of his office in the utmost confusion; and, that doubts were entertained as to the legality of the appointment of the new sheriff, and who would not be able to summon a jury and wit-

nesses in time for the court—that there were no persons in jail nor any criminal cases of importance to try; and, that some of the gentlemen of the bar, who represented the greater number of the suitors, had to attend the Legislature; and, that under all the circumstances it would be much more expedient and satisfactory to the community to hold a special court, when these difficulties would be principally obviated, and the whole business of the court might be disposed of.

To this application, the respondent then refused to give a decisive answer, stating that he would do so at Wilcox. When holding the court at Wilcox as many as two or three successive messages came from Marengo, with the same request and for the same reasons; and also stating that the clerk and sheriff, together with a large majority of persons interested in the business of the court, wished that there should be a failure, because no business of consequence could then be transacted. To these requests were also added those of a number of the gentlemen of the bar, then at Wilcox; who also represented suitors in the court at Marengo.

For all these reasons, believing that a court would have been useless, and that a special court would meet the ends of justice and the wishes of the people, and as it was then understood that a special court would be appointed by act of the Legislature, which, in such cases, had been rarely refused, the respondent did, almost for the first time, yield his assent to this strong appeal, and failed to hold the court.

To this measure he was actuated by no motive of personal convenience to himself. Marengo was the last court on the circuit, and not a great distance from Wilcox. It was much more convenient for him then to hold the court at Marengo, which in all probability would have continued but a day or two, than to hold a long special court at the close of the supreme court.

All of which is respectfully submitted to the wisdom and consideration of this honorable Senate.

*Tuscaloosa, January 14, 1829.*

*Evidence taken in the investigation of the charges made by William Kelly, against the Judges Saffold, Chenshaw and White.*

The Deposition of Simon L. Perry, taken before the Judiciary Committee on the part of the Senate, in relation to the charges preferred by William Kelly, Esq. against Judges Chenshaw, White and Saffold.

This deponent states, that he was one of the Judges who presided in the supreme court, a part of January term 1828, that during that term, the cases of Robert Thompson vs. Littleberry H. Jones was argued. This deponent was one of the Judges who heard that argument, and joined the other Judges in consultation, for the purpose of deciding the same; the result of the consultation was as he believes, that the court stood divided in opinion, the three Judges charged, against Judge Taylor and this deponent. Upon which it was proposed by one of the Judges, as the cases were important, and the question a difficult one, not to deliver an opinion at that time, as Judge Lipscomb was absent; but to retain the case for argument at the next term, for the purpose of obtaining his opinion. At the last July term of the supreme court, about the end of the fourth week, this deponent was anxious to leave court for a few days, and accordingly consulted some of the bar, who consented. Among the rest he consulted William Kelly, Esq. who objected, and gave as a reason, his anxiety to have the cases spoken of tried, and he wished me present. I then observed to Wm Kelly, that the Judges knew my opinion, and if that opinion was necessary, I presumed the cases would be continued.

Question by the Counsel of the Judges. Judge Perry will please state whether the Judges intimated an express opinion, at the first argument, or only the leaning of their minds. Secondly, whether it was not an arrangement that was determined on, that the Judges might be better satisfied on the law of the case, and whether the determination to have the causes reargued, was not suggested by the counsel in court?

Answer to first Interrogatory: This deponent is of opinion, that the intimation of opinions at January term, 1828, would have been delivered as the opinion of the court, but for the absence of Judge Lipscomb.

Answer to the second Interrogatory: This deponent is of opinion, that a reargument had been concluded upon before the cases were returned to court.

Question by M. Kelly. Has your opinion undergone any change, on the subject of the controversy between Jones and Thompson since January term? Did you inform said Kelly at July term or at any time previous what your opinion was on that subject? Was it not on inquiry by him since July term, that you informed him that you were in favor of affirmance? In answer to the first Interrogatory of Wm Kelly, this deponent states that, his opinion is the same at this time as at January 1828, which opinion I have

his knowledge of ever having informed you or, except it may have been done when the cases were referred for reargument, until since the last July term. My opinion was in favor of affirming the judgments of the court below. It was formed from the investigation of the cases at January term. I have examined the subject since, but freely admit that my opinion is subject to be changed when satisfied that that opinion is wrong. This deponent cannot say what effect another argument with additional authorities would have had upon his mind not having heard them.

SIDN L. PERRY.

Sworn to and subscribed before me, this 10th day of January 1829, in the town of Tuscaloosa.

ABNER S. LIPSCOMB, Judge of the Circuit Court.

The Deposition of John Elliott, taken before the Judiciary Committee of the Senate, on the part of the Judges.

Question 1st. When a cause has been reversed in the supreme court, and remanded for the purpose of having a new suit tried between the parties, if the party in whose favor it was remanded does not tender the new issue until after the commencement of the first term of the circuit court to which it was remanded, and then says he will rely upon the old issue, may the adverse party or not continue the cause as a matter of right?

To the first Interrogatory. This deponent saith, so far as he is conversant with the practice of the courts, he considers a continuance of a cause under the circumstances above detailed, as a matter of right.

Question 2nd. Where a cause has been twice argued in the supreme court, and the judgment of the court pronounced, would it, or not, be right for the court to withhold the judgment and retain the cause on the suggestion of the Counsel, that an absent Judge, who had not heard the second argument, might if his voice could be heard, vary the result?

To the second Interrogatory: This deponent saith, that he would consider it improper in the extreme, for the supreme court, to withhold their judgment, and retain a cause on the suggestion of the Counsel, that an absent Judge of said court, who had not heard the last argument might, by his voice, vary the result of the decision about to be pronounced. Indeed this deponent, conceives it would be wrong, if not extra judicial, for a Judge to pass upon a case in the last resort, when he had not heard the final argument, especially as in that final argument, new lights might have been collected and advanced, which would perhaps have entirely changed his first legal opinion or impression.

Question 3rd. State whether you have practised as a lawyer, before Judge Crenshaw, on the circuit, and whether he has or not, dispatched the business of the court in the usual time?

To the third Interrogatory: This deponent saith, that he has practised as a lawyer, before Judge Crenshaw, that said Crenshaw presided as circuit Judge in the first circuit of this State, a short time before Judge Lipscomb was, by an act of the General Assembly of this State, located in the first judicial circuit permanently. This deponent cannot recollect particularly, whether all the business in the courts of said circuit was dispatched by the said Crenshaw, at said time, but the course of said Crenshaw on the Bench, was characterized by industry and attention to his official duties; and the business of said courts was dispatched, he believes, to the satisfaction of a large majority of the members of the Bar of said circuit.

Question by Mr Kelly. Have you ever known the minority of the members of the supreme court to reverse a judgment contrary to the opinion of the majority, when the opinion of the majority was known to the minority? If you please state the instance.

To the first Interrogatory propounded by Mr Kelly: This deponent saith, that he has never known a majority of the members of the supreme court, reverse a judgment contrary to the opinion of the majority, but that he does not consider an absent Judge, who had not heard the final argument in a cause, as one of the members constituting such court, for the disposal of such cause.

JOHN ELLIOTT.

Sworn to, before me, this 10th Jan. 1829.

ABNER S. LIPSCOMB, Judge C. C.

The Deposition of John Gayle, Jr.

Question 1st. Please answer all the Interrogatories, put to Mr Elliott in their orders.

To the first Interrogatory: I answer that by strict rule, a cause never stands for trial, till a suit is made up between the parties. A party is not required to prepare for his trial, till such issue is made up; and I am of opinion, that if it be not tendered before the sitting of the court, or notice given, a continuance must be allowed as a matter of course. Sometimes, in almost all cases, is allowed the parties for preparation, and if the real condition of a cause cannot be known till the court sits, it would lead to surprise, to rule them into a trial.

To the second Interrogatory: I answer, that a cause in the situation described by the interrogatories might, or might not, be withheld at the pleasure of the court, depending on a variety of considerations. I would say after a cause has been twice argued, that a member of the bar would have no ground to insist on a decision being withheld on account of there not being a full court, because if that were desirable it should have been made known before the argument.

To the third Interrogatory: I do not remember ever to have practised before Judge Enshaw in the circuit court, except a small part of a term of Dallas court, several years ago.

To the fourth Interrogatory: I do not recollect any cause in which the minority of the Judges of the supreme court, have reversed a judgment against the known opinion of the majority, though this may often happen. I conceive that when a cause is submitted to competent court and argued, the opinion of an absent Judge ought not to have any influence in its decision, because he is as to the case not a member of the court. The court may, as I have before stated, postpone their decision.

Question second, by Mr. Kelly: If he minority reverse and remand a cause, will the principle adopted by such minority be binding on the majority, even in the same case if brought up again, but especially, will it be binding on the majority in similar cases subsequently arising?

To Mr. Kelly's second Interrogatory: I answer, that the decision of a competent supreme court, whether it be made by a minority of the Judges or not, is binding and must be regarded as the law, till it is reversed, which it is at all times competent for the supreme court to do. The principle established by the supreme court is not binding on itself, because at all times that tribunal can change it. A decision by a minority of the Judges would not be entitled to as much respect as one made by a full court, and I should suppose the court would have much less reluctance in reversing such a decision.

To the second Interrogatory, by the Counsel for the Judges: What do you understand to be the practice in this State, when the grand jury have returned a true bill on an indictment for a capital offence, the party having been previously bailed by the committing magistrate or a circuit Judge, and an application is made to bail him, after the finding of the grand jury?

My practice has been to hear applications for bail, at all times; and to examine the evidence with a view to ascertain whether bail should be allowed. I have sometimes, when a trial was at hand, declined such examination by reason of the press of business, and the want of time. I know this to have been the practice of other Judges, and I believe of all I have conversed with on the subject.

Third Interrogatory, by the same: When a Judge has ordered a prisoner into the custody of the sheriff do you conceive it to be his duty to see that his order is obeyed by examining the jail? I do not.

Fourth Interrogatory by the same: Were you at the last fall term of Greene and Tuscaloosa courts held by Judge White? If you were, state in what manner he dispatched the business, what amount of business was done, and at what time the court sat and adjourned?

I was at these courts; they were held incessantly, within the usual hours of holding courts, say from 8 or 9 o'clock till the approach of dark. Sometimes a recess would be ordered at dinner, and frequently there would be no cessation of business till night. The Judge was indefatigable in his exertions to dispatch the business on the docket; and manifested much solicitude, and sometimes impatience, at being retarded by the length of time consumed in the trial of tedious and litigated causes. In the county of Greene there were many of this character, and also in Tuscaloosa. In Greene there were four capital cases tried and I think the criminal docket occupied as many as eight days of the term. There was an unusual accumulation of business in both courts, and I am of opinion that more old and difficult causes were disposed of, than had been at any former term, at least within my knowledge. From the nature of the business, it was impossible to progress with any thing like tolerable speed on the docket, and I think as much was done as could reasonably have been done under the circumstances.

J. GAYLE.

J. M. TAYLOR.

Signed and sworn to, before me, this 16th Jan. 1829.

William J. Vandegriff deposes and says.

Question by the Judges' counsel. Please answer the last question put to J. Gayle, esq. I attended the last circuit court, held in Greene county by Judge White, during the whole term. I did not attend the court in Tuscaloosa, except only during two or three days, and I am unapprized of the quantity of business done. In Greene four capital indictments, involving considerable mass of testimony, were tried, and the remainder of the criminal docket, which was larger than usual, was disposed of. The civil docket was at the instance of the bar called over, on the first day of the term and perhaps seventy or eighty judgments were taken, without the intervention of a jury. The court was every day, during the term, convened at about 8 o'clock, and several times did not adjourn for dinner, it sometimes set after night at a late hour. The litigated causes on the civil docket, determined by Judge White were causes which had been for several times on the docket, and were of such a character as would necessarily make them require much time in their investigation. I believe that Judge White spent less time on

bench than has been usual, and that he at all times manifested a very strong desire to dispose of all the business before him.

Second interrogatory: If you have ever practised before Judge Crenshaw, to what manner does he dispatch the public business, and whether his habits are industrious?

Judge Crenshaw held a court in Greene I think the fall term in 1827, which I attended. The court at this term disposed of both the civil and criminal dockets, and I do not remember to have heard a want of industry in the presiding Judge complained of. I thought the business was disposed of with as much dispatch as was compatible with the purpose of administering justice to the parties concerned.

Question by Mr Kelly. How many civil causes were tried at the last term at Greene, except those disposed of without litigation?

I believe there were but three verdicts obtained on the civil docket. They were each of them cases of considerable difficulty and importance. The criminal docket occupied the court I believe eight or nine days of the term; one of the causes and the first tried on the civil docket, in which a verdict was obtained consumed one day in its investigation and I believe the court did not adjourn during the trial. The second was an action of trespass to try titles, involving a variety of difficult questions, and much testimony—it consumed in its investigation near two days, same I thought during the trial that the presiding Judge pressed the trial with unremitting industry. The chancery docket was called over and such orders were taken as were applied for at the bar.

WILLIAM J. VANDEGRAFF.

Sworn to before me, this 15th Jan. 1829.

ABNER S. LIPSCOMB Judge of the circuit court.

The Deposition of Robert G. Gordon, taken at the instance of the Judges.

Please answer the three first questions put to John Elliott, Esq.

To the first question I answer that I have never witnessed a case of the kind that I now recollect; but it has been usual to continue cases thus situated, upon the suggestion of counsel that they were not ready for trial; at least I recollect some instances of such continuance.

In answer to the second interrogatory, I can only say that I have never been called upon to ask for indulgence of this sort, and have never witnessed an instance of indulgence of this kind being granted, and consider it a matter of practice and one which would tend much to delay a cause, and should not, unless under very special circumstances, be indulged in, and knowing the circumstances of the cases which I presume are alluded to, should not have been indulged.

To the 3d, I answer that I have practised, both in the 2d and 6th circuits from his appointment down to the last circuit in the past autumn. He has sometimes failed to reach the end of the docket, and this has happened with most of the Judges, if not with all who have presided in those circuits. It has been customary with Judge Crenshaw to convene the court at an early hour, and he has generally sat until night, and frequently to a very late hour at night. I think he has discharged as much business in the circuits, in which I have practised before him, as any other Judge. It has not been usual for any of the Judges to clear the dockets in the counties of Dallas and Wilcox for the last year or two; perhaps it has been done once or twice.

Question by the counsel for the Judges.—State whether you have practised before Judge White, and if you have, what are his habits of industry and whether he dispatches the public business in a reasonable time? I answer that in the spring of 1827, or fall of 1826, Judge White held the courts in the second circuit. I then attended the courts of Dallas and Wilcox. I think no other. In those counties he gave pretty general satisfaction. I was myself pleased with his administration, and I think the same sentiment was expressed by the other members of the bar. As an evidence of their satisfaction and respect for his conduct, the bar gave him a dinner; this has never been given to any Judge before.

His manner and industry were similar to those exercised by other Judges on the above circuit. I also attended a court in Montgomery, in the spring of 1828. The discussion of some chancery cases of much magnitude came before him; he heard the arguments during (I think) two days, and sat till a late hour at night for two or three nights. In those cases he manifested industry and legal learning, and I think in the whole course of that term, much industry and attention to the duties of his station. His manner is not perhaps as expeditious as that of some of the other Judges. R. G. GORDON.

Sworn to, and subscribed before me, this 15th Jan. 1829. J. M. TAYLOR.

The Deposition of the Hon. Abner S. Lipscomb, taken at the instance of the Judges.

Please answer all the interrogatories put to John Elliot, Esq. in their order.

1. I do not think that he could continue as a matter of right. It however, it prevented his making himself ready on the former issues, it would certainly be ground for continuance.

2. It would be highly improper to hear such a suggestion, or to suspend the judgment of the court on that ground.

To the first cross interrogatory propounded by Mr Kelly. I have never known a case under the circumstances set forth in the interrogatory. The supreme court is always composed of the Judges present, and among it of those present never, to my knowledge, declared a judge to act against the will of the majority.

Question by the counsel for the Judges. Did you or not agree with the other Judges in refusing either to retain the causes of Thompson vs. Jones, at the last July term of the supreme court, at the suggestion of the defendant's counsel, and agree with them in remanding the causes to the court below?

I did agree with the other Judges in refusing longer to retain the causes of Thompson against Jones, and in remanding the causes after the question of reversal had been determined by a majority of the Judges against the opinion of Judge Taylor and myself. I considered the order for remanding as a matter of course, but in this I think the court were unanimous.

ABNER S. LIPSCOMB.

Sworn to and subscribed before me, this 15th January, 1829. J. M. TAYLOR.

Deposition of the Hon. John M. Taylor, taken at the instance of the Judges.

Please answer to the two first interrogatories put to John Elliott, Esq. and the cross interrogatory put to him by William Kelly.

To the first question put to Mr. Elliott, this deponent answers that he can state what his own practice has been as a Circuit Judge. When a cause is remanded by the supreme court, he considers it standing for trial at the first term of the circuit court; but slight causes have always been by him deemed sufficient for a continuance. For instance, if the certificate of the clerk of the supreme court has been received so short a time before the commencement of the term that extraordinary diligence would be necessary to prepare the case for trial. In the case particularly specified in the question, if the opposing counsel were to allege that he was not prepared for trial on account of the course adopted, he would continue the cause. In answer to the second question, this deponent says that in his opinion it would not be right; he would himself as soon give his opinion without hearing either argument as without hearing the second where there were two.

In answer to the interrogatory put by Mr Kelly to Mr. Elliott, this deponent says that he has no recollection of any instance of the kind.

Please answer the first question put to Judge Lipscomb.

This deponent answers that he cannot recollect the whole of the circumstances which transpired at that time. He remembers that the counsel for the defendant did suggest that possibly if Judge Perry were present the result would be varied; the counsel for the plaintiff replied that this was an extraordinary suggestion, and one which could not for a moment be received by the court, or something to that effect; to which the counsel for the defendant replied, that he did not so consider it, nor did he know the opinion of Judge Perry, and this deponent's present recollection is, that he did not consider the defendant's counsel as pressing this point in the way of a motion, nor does he remember that an opinion of the court was given on it. It may have been however, and if it were, he certainly did not dissent from that opinion, but united in it. He did unite in remanding the cases to the circuit court.

Question by the same. Please state why the causes of Thompson vs. Jones were not decided at the January term 1829?

After the argument the case was taken into consideration, as is usual. This deponent and Judge Saffold then occupied the same room, and conversed much on the subject. This deponent, although inclined to affirm the judgment, came to no satisfactory conclusion, and felt great difficulty on it. At length it was proposed, and as well as he remembers, by himself, that an advisory should be taken on the case, and as some of the other judges declared themselves not satisfied, this course was adopted.

Question by the same. Please state whether you knew Judge Perry's opinion on those cases previous to or at the July term last, and whether there was any agreement or understanding that the cases should, in any event, be retained for his opinion upon his leaving the court previous to its adjournment?

I have some idea that Judge Perry did express an opinion in favor of an affirmance at January term, but it is vague. Either then, or at the July term, I believe I understood his opinion to be that way, but whether in a conversation or conversations, between ourselves, or when the other members of the court were present, I cannot say. I have no recollection of any understanding to retain the cases for his opinion in any event.

J. M. TAYLOR.

Sworn to and subscribed before me, this 17th January 1829.

A. S. LIPSCOMB, Judge of the circuit court.

Additional questions put to Judge Lipscomb by the counsel for the Judges.

Will you please state whether you knew of Judge Perry's opinion previous to the argument and decision of the causes of Thompson vs. Jones, at the last July term, in relation to said causes, and did you know of any agreement or understanding that the said cases would, in any event, be retained for his opinion?

I did not know that judge Perry had formed any opinion in these cases. I did not know the nature of them until after he had left the court. I heard of no arrangements by which the causes should be retained for his opinion. I have an impression that, after the opinion of the court was delivered, judge Gayle intimated to me his impression, that judge Perry entertained the same opinion that judge Taylor and myself had formed.

Please state whether, when you have ordered a person into the custody of the sheriff, you think there is any obligation on the Judge to see that the officer does his duty?

I do not consider myself as required or authorized to see the part of a turnkey for the sheriff. I take it for granted he does his duty until advised of the contrary.

Please state what the practice is where application is made to bail a person, against whom a true bill has been found for a capital offence, he having been bailed by a circuit Judge previous to the finding of the bill?

It has been my uniform practice, when a bill has been found against one who has been bailed by a circuit Judge for the same offence, to permit the accused to enter on bail, unless the prosecuting attorney should be dissatisfied with the bail. This I think is the correct practice, and I do not believe that I should have any authority to imprison after a circuit Judge had admitted to bail, only on exceptions taken to the sufficiency of the bail. The finding of the grand jury is on ex parte testimony, furnished by the State. The examination before the Judge on an application for bail, opens an inquiry into all the attending circumstances, and the opinion of the Judge after such examination, carries a stronger presumption than the finding of the grand jury. ABNER S. LIPSCOMB.

Sworn to and subscribed before me, this 15th Jan. 1829.

J. M. TAYLOR.

The Deposition of the Honorable William Crawford, taken at the instance of the Judges.

Please answer to the two first Interrogatories put to John Elliott Esq.

Answer 1. When a cause is remanded for the purpose of having a new issue tried, I consider the cause at the rules until the issue be joined, and that the cause will not stand for trial at the next term, unless the issue shall have been made up a sufficient time before court for the party to summon witnesses to support his cause. In the case put in the first interrogatory, I consider it the right of the adverse party to have the cause continued.

Answer 2. In the case put in this interrogatory I do not believe that it would be right for the court to withhold its judgment on the suggestion supposed.

Answer to the first Cross Interrogatory. I have never known a case like the one supposed in this interrogatory to occur. I will, however, state that I should not consider it proper for a supreme court to withhold its judgment after the argument of a cause before it, on account of the opinion of any absent Judge. WM. CRAWFORD.

Sworn to and subscribed before me, this 15th Jan. 1829.

J. M. TAYLOR.

The Deposition of John J. Ormond, taken on the part of the Judges.

State whether you were counsel with Mr Kelly for Jones, in the cases of Thompson against him, in the supreme court and in the circuit court, and if you were, state whether the cases were taken up for argument at the July term 1828, of the supreme court out of order upon your application and for your accommodation?

In answer, I say that I was one of Jones' counsel; that being extremely anxious to go home, the causes alluded to in the interrogatory, were, at my suggestion, taken up out of the order at the July term 1828, and heard sooner than they otherwise would have been.

State whether you had agreed to continue the said causes at the last term of Lawrence circuit court before Mr Kelly arrived at court your inducement to enter into such agreement if you did make it, and all the conversation which occurred between you and Thompson's counsel in relation to such an agreement? State also whether you did not know, before the continuance of said causes, that Thompson had an absent witness, whose testimony was considered material by his counsel, if the old issue should be tried again, and if you did not, while the question of continuance was under discussion, propose to the court the appointment of a distant day in term, to allow the counsel for Thompson time to send to the county of Madison for his absent witness? State also whether you were not asked by Thompson's counsel, on the second day of the term, what plea you would rely upon; and if you were, what was your reply? State whether the causes, if they had been regularly taken up on the docket, would not have been disposed of before Mr. Kelly's arrival at the court? State also when you first informed Thompson's counsel of the pleas you would rely upon; and if you did not know before you proposed the appointment of a distant day of the term, for the trial of the causes, that his counsel considered himself obliged to leave the court before its adjournment?

In answer to the second Interrogatory, I state that I was, with Mr Kelly, counsel for Jones; that Mr Kelly did not arrive until the fourth day of the term. The causes were of great magnitude, and I was totally unprepared to try them, and besides, did not wish to go into it without Mr. Kelly. Influenced by these considerations, and believing also that Thompson could continue the causes as a matter of right, on the second day of the



term, as well as I recollect. I agreed with Mr Hopkins that the causes might be continued. Jones afterwards arrived at court and was extremely anxious to try his causes. I then asked Mr Hopkins to release me from my engagement with a view that he should himself continue the causes by application to the court if he thought proper. My object was, that my client might be satisfied that I had acted correctly. Mr Hopkins released me from the engagement. One of the witnesses afterwards came to me to know when the cause would be tried; and my impression is, (but of this I do not speak confidently) that from my thorough conviction that we could not try the cause, I told the witness, in Mr Hopkins' presence, that the causes would have to be continued. My reasons were, that Mr Kelly and myself had agreed to offer an additional plea of partial want of consideration, and to rely also upon the old plea of usury; both of which pleas we were unable to sustain, from the absence of an important paper; which I supposed was in the possession of Judge Kelly. I also knew, from various conversations with Mr Hopkins, and from the witness having once been summoned, that Thompson relied upon Judge Chapman as an important witness on the plea of usury. I intentionally avoided informing Mr Hopkins upon what we relied, in consequence of Judge Kelly's absence; but on being pressed by Mr Hopkins, on the second or third day of the term, as well as I recollect, I informed him that we should rely upon the old issue of usury, and file an additional plea of partial want of consideration. Upon Judge Kelly's arrival, he insisted on a trial, saying that he would rely upon the old issue alone. Some conversation ensued between Mr Kelly and Mr Hopkins, and with a view of getting a trial I proposed that a distant day of the term should be set for the trial of the cause, in order that both parties might get their witnesses, which proposition was made a *rendu* to the court. I also know, from the information of Mr Hopkins, that he was obliged to leave court early in the second week. Mr Kelly's motion for a trial was made on Friday of the first week. If the cases had been taken up in their proper place on the docket, they would have been disposed of before Mr Kelly's arrival.

State what you know of the application to argue, or to continue the suit in chancery, of Smith vs. Anderson, and what was your connexion with that cause?

In answer to this interrogatory, I state that upon Mr Hopkins' leaving Lawrence court early in the second week, he spoke to me to attend to the case assigned to him in this interrogatory. On Saturday of the second week Judge Kelly applied to the court to take up the case as he was compelled to leave the court. Judge Safford agreed to consider the opposite counsel consented. Mr Smith, jr. counsel in the cause, refused his assent, and stated to the court that in consequence of the absence of Mr Hopkins he wished the cause continued. The judge refused to continue on the ground that there was time for other counsel to examine the case, and that the absence of Mr Hopkins was voluntary. Judge Kelly then proposed to make his argument at that time, which the court agreed to hear, provided it was consented to by the opposing counsel; the consent was withheld; the court then remarked to Judge Kelly, that if he would write an argument and leave it with the papers he would examine it. The cause was afterwards tried and a decree made in favor of Judge Kelly's client.

Please answer the two first interrogatories put to John Elliott, Esq.

In answer to the first interrogatory put to John Elliott, Esq. I state that I have not much knowledge in such cases, but by analogy to similar cases, I would say that if the issue was not tendered, and no notice given a reasonable time before court of an intention to rely upon the old issue, that a continuance ought to be granted of course.

To the second, I answer, that I think it would not be right to withhold a judgment in the case supposed. Nor do I believe that any court has ever done it.

Have you practised in the circuit courts before judges White and Crenshaw, and if you, have did they dispatch the business with diligence and in a reasonable time?

In answer, I state that I have practised before both of them in the courts of the circuits in which I live. They dispatched the public business with diligence, and in the usual time, and to the satisfaction of all; at least I heard no expression of dissatisfaction, and believe all were satisfied.

On the suggestion of Judge Kelly, I add that I do not believe he had any knowledge of the conversation detailed between Mr Hopkins and myself, in relation to the continuance of the causes of Thompson against Jones, at Lawrence circuit court before his arrival.

First question by Mr Kelly. Was or was not Judge Chapman attending the circuit court of Lawrence, as a witness, when the causes of Thompson against Jones were first tried, and did not the plaintiff decline to examine him or any other witness, and rest his cases on a demurrer to the evidence of usury offered by the defendant?

Second. Did or did not Judge Safford decide that the causes stood for trial at that term, and continue them on account of the unreadiness alleged by the plaintiff's counsel.

Third. Was any thing said in court by the plaintiff's counsel as to absent testimony? Did he allege that the plaintiff had testimony that was absent as a ground for the continuance?



In answer to the first interrogatory of William Kelly, I answer, that judge Chapman admitted that he first tried of said cause, as a witness on the part of Thompson, but Thompson did not call him or any other witness, but demurred to the defendant's evidence.

To the second, I answer, that I have not a distinct recollection but believe that judge Stillinger inquired of Mr. Lockins if he was as well prepared for trial as he would have been if he had been notified in time that the plea of usury would be again relied on; from which, without any distinct recollection, I infer that he did not consider a continuance was a matter of course.

To the third, I answer, that I have no recollection of his putting the continuance on that ground.

Question of the counsel of the judges. Had you not heard Thompson's counsel say, after the trial of the causes in the circuit court, that as judge Gayle decided against Thompson on the ground that Jones did not purchase the note of Thompson, that judge Chapman could have proved that Jones had acknowledged that he did purchase the note; and did you not propose to the court before the continuance of the causes, in the presence of Mr. Kelly, to appoint a distant day of the term with the purpose of allowing the counsel of Thompson time to procure his evidence?

In answer to this interrogatory, I say that I had frequently heard Thompson's counsel say that judge Chapman would prove that Jones had admitted that it was a fair purchase of the bond of Wade and others, which was at or after the first trial in the circuit court; and had heard Chapman say the same, and have frequently heard the counsel for Thompson repeat the same while the causes were depending in the supreme court. I also state, as the case that while the question of continuance was depending at the last term of Lawrence circuit court I proposed another day in the term for the trial of the causes, to give both parties an opportunity to get their witnesses; and believe that I said there would be time to send to Madison, but of this I am not absolutely certain. Judge Kelly was within three feet of me, and for her this deponent saith not.

J. J. ORMOND

The deposition of the honorable Henry W. Collier, taken at the instance of the judges.

Please state whether you have practised law before Judge White on the circuit, and state whether he dispatched the public business in a reasonable time? Disclose the nature of the business done at the last fall term of the circuit court of Tuscaloosa, and whether, as much business was done as could have been reasonably done? State at what time the court met and adjourned?

Answer. I have practised law before Judge White on the circuit; and think he discharged the public business with reasonable dispatch. The business at the last term of the circuit court of Tuscaloosa county was various in its character. Some cases were disposed of without trial others required a tedious and protracted investigation. Of the latter character of causes many and the most difficult were forward on the docket, having been continued from term to term, because of the non-attendance of some one or more of the many witnesses summoned to testify on the trial. The most of the causes were, I think, tried at the last term of the court. Judge White, I thought evinced a strong disposition to get through with the business but seemed disinclined to push forward at the sacrifice of the interest of suitors, whose causes required a long and intricate examination. The case of Hudsons' administrator, vs. Hudsons, the trial of which I think occupied the court a day and part of the night was continued in an early part of the term. The cause, when afterwards requested, Judge White might very well have declined trying; but discovering the importance to both parties of speedy trial, by the consent of the gentlemen of the bar he permitted it to be taken up out of its order.— There was also a motion against the taxcollector of Wilcox and his securities which engaged the court, at different times, at least a day.

I believe under all circumstances, Judge White did as much of the business of the court as could have been reasonably done. The minutes of the court will show the hour the court usually met, and as they are at hand can be referred to. There was no regular hour of adjournment the court generally sat until sunset, and if at that time there was a trial in progress, the court generally sat until it was concluded or submitted to the jury.

State whether you have practised before Judge Crenshaw, and whether he dispatches the public business in a reasonable time?

Answer. I have, and think he dispatches the business in a reasonable time.

HENRY W. COLLIER.

Sworn to and subscribed before me. January, 1829.

Depositions of sundry witnesses, taken before the judiciary committee of the Senate, on the part of the Judges implicated by Wm. Kelly, Esq. in the charges laid before the Senate.

Henry I. Thornton being duly sworn.

Question by the counsel for the Judges State all you know in relation to the order

made by Judge White, at the Madison circuit court, directing James W. McClung to be taken into custody by the sheriff, on an indictment for murder?

I was one of the counsel of McClung. After the indictment had been returned, endorsed "a true bill," Mr Hutchinson, who was one of the prosecuting attorneys, informed the court thereof, making no remark that I heard other than giving such information. Judge White immediately made an order for his commitment. Judge Clay, with whom I was associated in the defence, rose and remarked that it was an unusual course for the court to make such order, without a motion to that effect from the Solicitor. The Judge replied, that, he thought it his duty to commit, and repeated the order. Between this order made and the time when the trial came on I never saw McClung in the court room. He was not confined in jail, but as I knew was indulged by the Sheriff. I often heard McClung say he would not go where White could see him; that he, the Judge, believed that he, McClung, was in jail, and he did not wish to deceive him. I will further state that I have a strong impression, that during the trial a motion was made to the court for leave to the prisoner to retire, under the custody of an officer, for the purpose of taking some refreshment.

Question 2nd, by the same. Will you state whether Judge White staid in his room generally, during the term of said court?

Answer. I knew that he mingled very little with society: I never saw him that I recollect, at least until after the trial of McClung, except in the court room or going to and from

Question by Mr Kelly. Have Judges White and Crenshaw, or either of them, succeeded in disposing of the business on the dockets where you have attended courts, held by either of them? Or has the business, to a great or considerable extent, remained unfinished?

Answer. I never practised before Judge Crenshaw on the circuit. I have before Judge White. As to the state in which he left the docket I recollect nothing remarkable. The extent of impression which can be made upon a docket in a given time depends on many circumstances: such as the difficulty and importance of the cases composing it, and to a great measure the conduct pursued by the gentlemen of the bar.

Second, by the same. Do you recollect seeing either Hewlett or Matting, passing about the square or otherwise going at large, after bills were found, and before they were respect vely tried?

Answer. I remember to have seen them both on the square. I have no knowledge that either of them were in prison.

Sworn to and subscribed before me, this 14th Jan. 1829. J. W. FAYLOR, Judge &c.  
The deposition of Henry Hitchcock, taken before the judiciary committee of the Senate, on the part of the Judges implicated in the memorial of William Kelly Esq.

Question by the judges' counsel. Will you state what the practice in this state is, when a cause has been reversed in the supreme court, and remanded to the circuit court, for the purpose of having a new issue made up between the parties and tried, if the party for whose benefit it is so remanded, does not tender an issue until the commencement of the term of this circuit court, which is first held after it is remanded?

I answer that the opposite party would under the practice I have been acquainted with be entitled to a continuance as a matter of right, if he requests it.

Question 2nd. Will you state whether you ever have heard in this, or any other state, of a judge giving his voice in the decision of a cause, which had been twice argued, he having heard the first argument and not the second.

I have never known a judge to give an opinion in a disputed cause, unless he had heard the argument in the cause.

Question by Mr Kelly. Has judge Crenshaw got through the dockets, in the courts held by him, when you have practised before him, or has not a considerable portion of it remained unfinished?

I answer that at some times, he has not got through the docket, at others he has: it depended upon the magnitude of the docket.

3rd. By the same. When a cause is remanded for further proceedings, to allow a party to add a plea, has not the party a right to decline filing the additional plea, and rely on the issue as it stood—and if he elects to take that course, does not the cause stand for trial, at the next term of the circuit court?

A party has a right to decline filing the additional plea, and if he gives notice of his intention so to do, a reasonable time before court, so as to enable the party to prepare for trial at the next term, it will stand for trial. If notice should not have been given of such intention the party would be entitled to a continuance.

Sworn to and subscribed before me, this 14th Jan. 1829.

J. M. FAYLOR, Judge of the circuit court.

James W. McClung being examined as a witness, introduced by William Kelly, says on oath

Question by William Kelly. Were you counsel for Patterson, in the suit against Burrard, tried before judge Crenshaw in the circuit court of Lawrence? If yea, was not said

Bill brought on a store account for, between \$50 and \$100? Did not the defendant rely on a set off, and prove the sale of a mule to plaintiff at \$100? Did not plaintiff introduce another account, to avoid the set off, and did not the defendant offer to prove that the last account had been paid or otherwise settled—and did not Judge Crenshaw refuse to admit that testimony, until the plaintiff's counsel agreed for it to be heard?

Answer:—I was not originally the counsel of Patterson. Mr Hopkins, who was the counsel employed, was well, and Mr. Ormond and myself attended to the case for him—I do not recollect the amount of the plaintiff's demand; my impression is, that it was less than fifty dollars—I think the case came up by appeal or certiorari from the judgment of a justice of the peace. My recollection is that the plaintiff sued the defendant on an open account for merchandize. The defendant, as well as my recollection serves me, proved that he had let the plaintiff have a mule at the price of \$100; the plaintiff then proved that the mule had been paid on a different account, from the one which was the foundation of the action. The defendant then proposed to introduce a witness to prove that he had some other demand against the plaintiff than the one above mentioned, (that is to say, the mule at 100 dollars,) or some other rebutting testimony, the precise purport of which, I do not distinctly remember. The judge, (Crenshaw) remarked that no other testimony could be received unless it was to impeach the character, or credibility of some of the witnesses. Mr Kelly as counsel for the defendant, insisted that the testimony should be admitted, and myself and Mr Ormond, remarked that we would not object, but was willing that the testimony should be heard—It was accordingly introduced, and, to the best of my recollection, was an entire failure. The Jury give a verdict for the plaintiff without regarding the testimony, last alluded to.

Question by the counsel for the judges Will you please state whether Judge White ordered you into custody, after the indictment was found a true bill against you, in Madison circuit court; and what your conduct was subsequent to that order?

Answer I was in the bar at the time, or immediately after the grand jury found a true bill against me. Previously, I had been only once or twice, in the court-house. After the commencement of the term, the solicitor announced that the grand jury had returned a true bill against me. Judge White immediately ordered me into the custody of the sheriff. I left the court house, in charge of one of his deputies. My health was very bad, and the sheriff from that consideration, as well as from his confidence in me, permitted me to go at large—I went to my residence, four or five hundred yards from the court-house, and studiously avoided the judge, until the day of my trial: I never even during the trial, or before, cast a look of recognition toward him. To the best of my recollection I was not in the court house any time, between my arraignment and trial—I do not now, nor did I ever hear, that the judge knew I was at large.

JAMES W. McCLUNG.

Sworn to, and subscribed before me, this 14th January, 1829

J. M. TAYLOR, Judge &c.

The Deposition of Benjamin Fitzpatrick, taken on the part of the judges.

Question 1st. By the Counsel for the judges. From your knowledge of the practise; if a cause be argued in the supreme court without objection and the judgment of the court pronounced, can it be retained upon the suggestion of the counsel, that if the voice of an absent judge could be heard in its decision, the result might be different?

Answer I know of no law to authorize such practice, and understand the practice to be different.

Question 2d. by the same. Will you please state what the practice in this State is, when a cause has been reversed in the supreme court and remanded to the circuit court, for the purpose of having a new issue made up between the parties and tried, if the party for whose benefit it is remanded, does not tender an issue until after the commencement of the term of the circuit court, which is first held after it is remanded, and then says that he relies upon the same issue, upon which the cause was tried; and whether or not under such circumstances the adverse party is entitled to a continuance if he alleges, that for want of such notice he is not ready for trial?

Answer. From the few cases brought up to the supreme court, from that section of the State in which I practice, I do not think I can speak with certainty as to the practice of this State in that particular, but am inclined to the opinion, and think there is no doubt from the practise of courts generally that under circumstances like those alluded to in the foregoing interrogatory, the party so surprized would, as a matter of right, be entitled to a continuance.

Question by William Kelly. With all their industry, do they succeed in discharging the public business in a reasonable time; on the contrary do they not leave much of it unfinished?

Answer. Judge White, while at Montgomery court, I think failed to get entirely through the docket: this I think was entirely attributable to some very heavy Bank causes, which had been pending in that court for a considerable time, and which were taken up at the first of the term, and they stood on the docket, and argued at great length. The balance of the courts in that circuit as far as I went, were holden, and the business dis-

posed of in a reasonable time; and the remainder of the courts I understood to have been holden, and the business disposed of in like manner. As to the disposition of the business in Autauga courts my memory does not enable me to speak with certainty. At Autauga circuit court last holden by judge Crenshaw, I think he failed to get through the docket, owing mainly to the trial of some very litigated suits, among which was perhaps some of the land notes, and a class of capital cases. In the balance of the courts in which I have practised before judge Crenshaw, (how many) I cannot speak with certainty, at least as to all my impression is, that he has usually gone through the docket; but on this subject I wish not to be understood as speaking with absolute certainty.

BEN. FITZPATRICK.

Sworn to, and subscribed before me, this 15th day of Jan. 1829. J. M. FAYLOR, Judge &c.

The Deposition of Francis S. Lyon, taken at the instance of the judges.

Please state the circumstances which led to the failure of holding Marengo circuit court last fall.

Not long before the time for holding the last fall term of the circuit court of Marengo county, I consulted with the most of the members of the bar residing in the county, and with the clerk and sheriff, to know if there would be any objections to a postponement of the term of the court till about the last of Jan. I was induced to make the inquiry and to wish a postponement of the court for several reasons. The election of Sheriff of the county held in Aug. last, had been contested and no person was commissioned till some time in Sept. and the person appointed did not, as well as I recollect qualify till some time in Oct. From the time of the election till some time in Oct. the office of sheriff was vacant; the old sheriff may have performed some official acts in closing business which he had commenced before the election in August. About the time the new sheriff was qualified, which I think was in the month of October, his predecessor in office had fled from the county, leaving the business of the sheriff's office in much confusion and many of the writs and other process which had been previously placed in his hands had been lost or mislaid. The most of the time of the new sheriff had been employed in endeavoring to arrange the business of his office in endeavoring to get possession of the property of his predecessor, against whom sundry executions. When I conversed with the sheriff upon the subject of a postponement of the court he informed me that he would not be able to summon more than one third of the jury by the meeting of the court. The clerk was willing to a postponement of the court, and all the members of the bar that I conversed with yielded their assent under a belief that the business of the court would be in a better state of preparation for trial in January, than at the regular term. Another reason that induced me to ask a postponement of the court, was that it was understood that the contested election for sheriff would be brought before the General Assembly at their present session, and it was desirable to have some expression of opinion, which would put an end to the difficulty. Another reason was, the court was to meet on the day appointed for the meeting of the General Assembly, and at least two members of that body practised in the court, and one of them expressed an earnest wish that the court might be postponed till January. Under all these circumstances, an application was made to judge Crenshaw at the request and by the permission of members of the bar, representing at least four fifths, and I believe nearly all the cases on the docket, to permit the regular term to pass and to consent to hold a special court in January. This request the judge at first, as I understood, refused to comply with, but afterwards when it was repeated at Wilcox, consented, as I was informed to hold a special term in January. I believe if the court had been held in November that many of the most important cases would have been continued. I heard no objection among the persons interested in the court to its postponement, and am satisfied that a special term in January would better have subserved the ends of justice. There was no prisoner in the jail of the county for trial at the regular term.

F. S. LYON

Sworn to and subscribed before me, this 16th Jan. 1829. H. W. COLLIER.

The Deposition of William I. Adair, taken at the instance of Judges White, Crenshaw, and Saffold, by the judiciary committee of the Senate of Alabama.

This deponent being required to answer the first interrogatories put to John Elliott, Esq. and also the cross interrogatory of Wm. Kelly, Esq., all of which will be seen in the deposition of Mr. Elliott, heretofore taken, saith, in answer to the first interrogatory, that the law in relation to continuances, so far as he is informed, always has, and must be left to the discretion of the presiding judge. In the exercise of that discretion, in the case as stated in the interrogatory, I am of opinion that a continuance ought to have been granted.

In answer to the second interrogatory, this deponent saith, that in a case as therein presented, he should conceive the court not only wanting in respect for its own dignity, but greatly censurable, if, upon a suggestion that the opinion of an absent judge, who had not heard either the arguments or the authorities, might change the opinion of the court.

In answer to the third interrogatory, this deponent replies, that he attended one term of the Lime-ton circuit court as a lawyer when judge Crenshaw presided, and, so far as he can recollect, he heard no complaint, either of delay or too much dispatch in running over the docket. He believes that all the causes were disposed of.

In answer to the cross interrogatory of Wm Kelly Esq. this deponent answers, that he has never known a case of the kind as stated in the interrogatory, nor has he ever known an instance of a court withholding a judgment when a majority of the judges present had concurred; because an absent member of the court, who had not heard either the authorities or the arguments in the case, might possibly be of a different opinion, and by the weight of his opinion vary the result.

This deponent having been asked if he had practised before judge White as a lawyer, and whether he dispatched business in the usual time? Answers, that he has practised before judge White, and that considering the number of difficult causes, of long standing and much interest, which were tried and determined by him on the circuit, he has dispatched the public business, if not in usual time, at least as a due regard to the rights of litigants and the correct administration of justice required. I have always found no hesitations in the discharge of his duty in relation to his conduct on the trial of James W. McClung, Esq. (as to which this deponent has also been requested to state what he knows, and he will, for the purpose of saving time and useless repetition, beg leave to refer to the response of judge White in relation to that trial, which deponent heard read in the Senate.) That statement is substantially, if not literally, true so far as deponent knows or believes. Deponent was one of Co. McClung's attorneys in that case, and can state that he thought then, and still thinks, if judge White erred in the whole progress of that case, it was in refusing to bail the accused; for, in addition to the amount of security which was tendered, but which of itself was not sufficient ground for bailing the prisoner, his counsel insisted and imposed to prove by eminent physicians that confinement in our prison would endanger his life, so the trial would not come on for some time. This was refused by the court at the time, but with an intimation that if the prisoner was regularly brought before him by habeas corpus, he would then hear and decide upon the motion to admit to bail.

W. I. ADAIR.

Sworn to and subscribed before me, 16th Jan. 1829. H. W. COLLIER.

Interrogatories put by the counsel of the judges, C. C. Clay.

1. When a cause has been reversed in the supreme court and remanded for the purpose of having a new issue tried between the parties, if the party in whose favor it was remanded do not tender the new issue till after the commencement of the first term of the circuit court to which it was remanded, and then say he will rely upon the old issue, may the adverse party or not continue the cause as a matter of right, and would you as counsel for the adverse party in such case prepare for the trial of the old issue without notice that it would be relied on?

2. Where a cause has been twice argued in the supreme court, would it or not be right for the court to withdraw its judgment and retain the cause on the suggestion of the counsel that an absent judge, who had not heard the second argument, might if his voice could be heard, vary the result?

3. Do judges White and Crenshaw dispose of the business of the circuit courts in reasonable time?

4. Were you present at the trials of J. W. McClung and John W. Hewitt, and if you were, state whether judge White ordered them into custody when the grand jury returned true bills in court? State whether you applied to bail them what was the result of your application and give so far as you recollect a brief history of the transactions in each case relating to the points referred to?

5. State whether it was not notorious in the part of the country in which you live, that John P. Hickman was indemnified against loss from the suit of Nance, & Co. vs. Lucas against Pope & Hickman?

6. State whether the decision of judge White on the second trial of the cause before-mentioned, as to the effect of the judgment of the supreme court, was or was not on a question of law, upon which men of equal talents might differ in opinion, and whether you were counsel for Lucas in that cause?

Question by Mr. Kelly. Please state what has been the practice in the northern part of the state on the subject of admitting to bail in capital cases, after finding a true bill? If you recollect any instance of its being admitted please state it. Did you ever refuse to bail Noble R. Ladd under such circumstances, while you were presiding in the circuit court of Lawrence?

of the circuit court to which it was remanded. I should not believe myself bound to try the cause, or to come prepared for trial—nor should I feel bound to try the case as it relied on, without any previous notice, as it might be considered equivalent to a change of the issue between the parties, which I think is, generally, if not universally, considered sufficient to entitle the party, to be affected by such change, to a continuance. In either case I should consider myself entitled to continuance, as a matter of right, according to the practice which I have understood to prevail hitherto.

2. To the second interrogatory, I answer, that I should not think the court justified in withdrawing, or setting aside a judgment pronounced, on a suggestion of course, that an absent judge who had not heard the argument, if his voice could be heard, by the result.

3. To the third interrogatory, I answer, that I do not at this time recollect having attended any but one circuit court held by Judge Crenshaw, to wit: Lancaster circuit court, in March, 1847. He disposed of the docket, I think, in a reasonable time, and several days before the expiration of time allowed by law, as well as I remember. I have frequently attended circuit courts held by Judge White—he is less prompt than some of the judges, but I think he usually dispatches the business in reasonable time.

4. To the fourth interrogatory, I answer, that I was present at the trials of John W. Hewlett and James W. McClung, and was of counsel for both. When the indictment against Hewlett was returned a "true bill," a motion was made by the Solicitor for his commitment. I resisted that motion, and urged his right to bail on the ground that his examination had taken place before his Honor Judge Taylor, who had examined the case quite fully, and had promptly admitted him to bail, in a recognizance of ten thousand dollars, as well as I recollect; that the finding of the grand jury was of ex parte testimony, and but prima facie evidence of the defendant's guilt; that under our constitution, a court had a discretionary power to admit to bail, in all cases, even after the finding of a grand jury; and that, as the object of the law before trial, was only to secure the appearance of the party and his submission to a trial, &c. not to punish him, I would, in some short time, which I named, give bail for him in fifty thousand dollars, or some other large sum, and thus render his appearance certain. Judge White, to my surprise and mortification, ordered Mr Hewlett into custody, refusing to bail him on any terms. Considering Mr. Hewlett a respectable man, and unfortunate, rather than a criminal, I then appealed to the humanity of the Sheriff and remonstrated against his putting Mr Hewlett in jail. In this remonstrance I succeeded. The Sheriff agreed to attend him, by himself or deputy; and, so far as I saw, or am informed, believe he did so. Hewlett was always present when required—and was, during the term, tried and acquitted.

Mr. McClung had invited an examination before justices—there being no circuit judge then in, or near, the State to our knowledge; and at the close of his examination had been bailed. When the indictment was returned a "true bill," or as I believe, the morning afterwards, the counsel appointed to prosecute, suggested the fact to the court, and made no motion to commit Mr. McClung, to my knowledge. But Judge White ordered him into custody, as I now recollect, without waiting for any remark from his counsel. I remonstrated against the justice and propriety of this practice, to commit without motion, and attempted to urge other considerations; (among them Mr. McClung's bad health, he having been a short time before dangerously, or very seriously ill, and then not restored,) but Judge White, manifested a total unwillingness to hear me, and I desisted. Mr. McClung was never put in jail, nor do I believe the sheriff restrained him of his liberty. I do not think he came into the court house afterwards, nor do I know that the judge even saw him till the commencement of his trial. He was also acquitted. I also offered to give bail for Mr. McClung in any sum that might be required; and I think, proposed one hundred thousand dollars, and felt confident that bail could have been given in that sum conveniently.

5. To the fifth interrogatory, I answer, that Hickman had a bond written by myself, to indemnify him against losses which might accrue from the business of the late firm of Pope and Hickman—I always believed and still do, that the bond embraced any loss which might be sustained by Hickman, by the final determination of the suit, Nance & use of Lucas vs. Pope and Hickman. I think the existence of this bond was notorious in the part of the State in which I reside.

6. To the sixth interrogatory, I answer, that the question decided by Judge White, on the trial of the case before mentioned, as to the effect of the judgment of the court, before given in that case, was to me, altogether novel. As well as I recollect, the argument of the question was without much preparation on the part of the parties. I was clearly of opinion, that the opinion of the court was erroneous.

1. To the first Question, by Mr Kelly, I answer, that the most usual practice, in the northern part of the State, after a bill found by the grand jury, has been to commit the defendant. I do not, at present, recollect any particular case, in which bail was allowed under such circumstances, by the court, when resisted by the prosecuting officer; though I think there have been such cases. I could state cases in which the defendant had not been committed, but in those cases, I do not recollect any motion to commit.

2. To the second interrogatory, by the same, I answer, that I did refuse to bail Mr Ladd, who had only been examined, I think before a justice or justices of the peace. As well as I recollect, I stated on that occasion, that the finding of a bill of indictment true by the grand jury was *prima facie*, sufficient to authorize, or require, a denial of bail; that I believed the court had power to grant bail, after finding a bill, if on examination of evidence, the proof should not be evident, or the presumption great of the defendant's guilt; that it was then inconsistent with my duty to the public, to make such examination, and that such examination on the eve of the trial might operate unfavorably to the purposes of justice; I therefore, ordered him into custody. I believe, I was asked whether the defendant must be confined in Jail—and that I answered in the negative, declining to make such order, and saying that I held the Sheriff responsible for the forwarding of the prisoner, without specifying the mode of confinement. C. C. CLAY.

THE STATE OF ALABAMA, *Tuscaloosa County*: I certify, that at the last October term of the circuit court of said county (the honorable John White presiding) there were on the trial docket 35 cases; on the chancery docket 55 cases, and 41 prosecutions, &c. on the state docket, that 197 cases on the trial docket were determined, of which number about 80 were either dismissed, undefended, or settled by the parties, that four only of the chancery causes were decided; and that all the state cases were tried or continued.

JOHN M. JINKINS, Clerk of the circuit court, Tuscaloosa county.

January 16th, 1829.—I have this day seen a receipt made by John P. Hickman, acknowledging that he had received from LeRoy Pope, who was bound to said Hickman in a bond of indemnity, the full amount of the judgement received by Nance & Co. for the use of Lucas, against Pope and Hickman, which receipt I believe to be genuine; the said receipt bears date the 1<sup>st</sup> July, 1828, and the sum mentioned therein was allowed by the said Pope as a credit on a debt which was due from the said Hickman to him.

WM. KELLY.

Upon Mr Kelly intimating an intention to examine professional gentlemen as to the capacity of Judges White and Crenshaw, the counsel for the Judges examined Messrs Hitchcock, Thornton, McClung and Fitzpatrick to that point, whose opinions were decidedly favorable to the Judges. The next day Mr Kelly, assigning as a reason the delicate situation in which it placed the witnesses, announced his determination not to examine witnesses on that point; and proposed that the same course should be taken by the judges, and that the testimony taken on that point should be suppressed, or retain it, and go on to take more as they thought proper. Whereupon the Judges agreed to prosecute the inquiry no further, and to suppress the testimony already taken on that point, on condition that Mr Kelly sign this statement of facts to be used before the Legislature only in the event that Mr Kelly insist before that body, on the incapacity of the Judges.

January 15, 1829.

WM. KELLY.

Thursday, January 22, 1829.

The Senate met pursuant to adjournment.

Mr Moore of L. from the committee on enrolled bills reported as correctly enrolled an act for the relief of Elijah Smith, tax collector of Franklin county; an act to provide for the support of paupers in the county of Jefferson; and, an act to prolong the regular terms of the circuit court of the county of Mobile, and for other purposes; all of which were accordingly signed by Mr President.

Mr Merriwether from the committee on roads, bridges and ferries, to which was referred the bill entitled an act investing the Mayor and Aldermen of the town of Tuscaloosa with the power of opening roads within the corporate limits of said town, reported the same without amendment. Mr Powell moved to amend the bill by striking out all after the enacting clause, and substituting another bill in lieu thereof; which was carried. Mr Perry moved further to amend the bill with the following: Provided, that a majority of all the free white male inhabitants being above twenty one years of age, residing in Tuscaloosa at the time, shall vote for, such road being opened; which was carried. Ordered, that the bill be made the order of the day for a third reading on to morrow.

Mr Smith, from the special committee to which was referred the message of the excellency the governor on the subject, reported a bill to be entitled an act to

an act giving the same fees to the clerk of the supreme court, as are allowed by law to clerks of the circuit courts, reported the same without amendment. *Ordered* that the bill lie on the table till to-morrow.

Mr Perry offered the following resolutions: *Resolved*, that it is the opinion of the Senate that the charges preferred against judges White, Saffold and Crenshaw by William Kelly, Esq. are not sufficiently sustained by proof to authorize an address to the governor for their removal. *Resolved*, that it is inexpedient to take further notice of said charge. Mr Hubbard moved that the resolutions lie on the table till to-morrow; which was carried. Yeas 15—Nays 5.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Comer, Crawford, Evans, Garh, Hubbard, McVay, Merriwether, Moore of J. Moore of M. Pickett, Powell, Smith, Vining and Wood.

Those who voted in the negative are, messrs Abercrombie, Perry, Ross, Walthall and Watkins.

A message from the House of Representatives by Mr Tunstall: Mr President, the House of Representatives have passed a bill which originated in the Senate entitled an act to alter and change a certain part of the road leading from Florence in Lauderdale county to Athens in Limestone county, and have amended the same in the manner herewith shewing in which they desire the concurrence of the Senate. They have passed bills which originated in the House of the following titles, to wit: an act to alter the times of holding courts in the 4th circuit; an act to arrange, designate and establish the boundaries between the counties of Butler, Pike and Covington and for other purposes; an act to alter the boundary line between the counties of Mobile and Washington; and an act to exempt certain persons from performing military duty in this state therein named; in all which they desire the concurrence of the Senate. They concur in the amendment made by the Senate to the bill entitled an act to change the times of holding the courts of commissioners of roads and revenue in the county of Franklin.

*Ordered*, that the Senate concur in the amendment made by the house to the bill entitled an act to alter and change a certain part of the road leading from Florence in Lauderdale county to Athens in Limestone county. *Ordered*, that the secretary acquaint the House of Representatives therewith.

Bills from the House of Representatives entitled an act to alter the times of holding courts in the 4th circuit; an act to arrange, designate and establish the boundaries between the counties of Butler, Pike and Covington, and for other purposes; an act to alter the boundary line between the counties of Mobile and Washington; and, an act to exempt certain persons from performing military duty in this state therein named, were severally read a the first time and ordered to second reading to-morrow.

A bill to be entitled an act to extend the limits of Clarke county, together with the amendments made thereto by the House of Representatives, was taken up. Mr Smith moved that the Senate concur in the several amendments made by the house to said bill, which was carried. *Ordered*, that the secretary acquaint the House of Representatives therewith.

A bill to be entitled an act for the payment of Martin Wells was taken up and the amendment offered thereto by Mr McVay adopted. The question was then put, shall the bill pass? and determined in the affirmative. *Ordered*, that the secretary acquaint the house therewith.

The following communication was received from the Governor by Mr. Thornton:

EXECUTIVE DEPARTMENT, Tuscaloosa, January 22, 1829.

The Hon. the Speaker and Members of the House of Representatives:

Gentlemen: I have the honor to transmit to you a remonstrance to the States in favor of the Tariff, adopted by the Legislature of the State of Georgia, which I have this moment received. I take this occasion, also, to transmit the resignation of the Hon. Nicholas Davis and Jack Shackelford, Esqr. members of the board of Trustees of the University of Alabama, in the 5th and 3d judicial circuits. I have the honor



A bill to be entitled an act to incorporate the Mobile marine railway and insurance company, was read the third time and passed. *Ordered*, that the secretary acquaint the House therewith.

And then the Senate adjourned till 3 o'clock this evening.

*Evening Session* — The Senate met pursuant to adjournment.

A bill to be entitled an act for the relief of Smith Evans of Greene county; and an act for the relief of William May and James Reynolds, were severally read the third time and passed. *Ordered*, that the secretary acquaint the house therewith.

A bill to be entitled an act for the relief of Elisha Davall, sheriff of Walker county, was read the second time and ordered to a third reading to-morrow.

A message from the House of Representatives by Mr. Torstall: Mr. President, the House of Representatives have adopted the following resolution in which they desire the concurrence of the Senate: *Resolved*, that the Senate be now invited to assemble in the representative hall for the purpose going into the several elections contemplated by a previous resolution of the two houses. Whereupon the members of the Senate repaired to the hall of the House of Representatives, and having taken the seats allotted them, Mr. President rose and announced the object of their meeting, and the two houses proceeded first to the election of four commissioners from the counties bordering on the Tennessee river to select and value the lands granted to this state by the general government, pursuant to the provisions of an act passed at the present session, and to a resolution of the two houses. Messrs William Barclay, James Brown, John D. Carroll, John Chisolm, Thomas Cunningham, William R. Cox, John Glass, Thomas Gibson, Green K. Hubbard, Alsimus Kindric, Henry King, Bernard McKernon, Quin Morton, John T. Rather and Temple Sargeant, being in nomination. Upon counting the votes, they stood thus: for Mr. Barclay 29 votes—Brown 16—Carroll 52—Chisolm 17—Cunningham 5—Cox 5—Glass 3—Gibson 28—Hubbard 31—Kindric 7—King 57—McKernon 8—Morton 36—Rather 31—Sargeant 21.

Messrs John D. Carroll and Henry King having received a majority of the whole number of votes given, were declared by Mr. Speaker to be duly elected as two of the commissioners from the counties bordering on the Tennessee river, to select and value the lands granted by the general government to the state of Alabama, and to perform the duties required of them by the provisions of the act entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named.

Those who voted for Mr. Barclay are messrs Conner, Hubbard, Moore of J. Perry, Ross, Smith and Wood; for Speaker Ambister, Barker, Broadnax, Brown, Clark, Colgin, Coopwood, Dupuy, Hudson, Massey, McElderry, Parker, Pickens, Rogers, Russell, Smith of J. Walker of D. Walker of m. Weissinger, Weibourne and Whitfield—29.

Those who voted for Mr. James Brown are messrs Moore of J. Vining, Smith and Wood, of the senate; Ambister, Anderson, Brandon, Brown, Dupuy, Foster, Hodges, Mardis, Massey, Nobley, Parker and Weibourne—16.

Those who voted for Mr. Carroll are Mr. President, Abercrombie, Conner, Crawford, Garth, McRivether, Moore of m. Perry, Powell, Ross, Vining, Walthall and Watkins, of the senate; Mr. Speaker, Barker, Barker, Barton, Bibb of L. Bibb of m. Bonnell, Bridges, Broadnax, Cole, Dale, Duke, Edmondson, Fearn, Flournoy, Foster, Haris, Hill, Lane, Lawler, Lea, Lewis of m. Mardis, Mims, Mobley, McElderry, Parsons, Penn, Perkins, Ticharson, Robinson, Rogers, Sanders, Smith of L. Sykes, Tarver, Townsend of m. Weissinger and Whitfield—52.

Those who voted for Mr. Chisolm are messrs Crawford, Evans, McVay of the senate; Bibb of L. Brandon, Broadnax, Colgin, Durrett, Fearn, George, Hill, Lane, Lawler, Parsons, Penn, Salter and Tarver—17.

Those who voted for Mr. Cunningham are, messrs McVay, Durrett, George, Smith of L. and Walker of m.—5.

Those who voted for Mr. Cox are, messrs Moore of m. Walthall, Duke, Edmondson and Sander—5.

Those who voted for Mr. Glass are, Mr. Speaker, Fearn, Lea, Parsons, Sanders—5.

Those who voted for Mr. Gibson are, messrs Hubbard and Pickett, of the senate; Anderson, Banks, Barton, Beise, Bibb of m. Brown, Clough, Cole, Colgin, Coopwood, Foster, Gage, Hodges, Lawler, Massey, Metcalf, Mims, Parker, Pickens, Richardson, Russell, Salter, Smith of J. Sykes, Walker of m. and White—24.

Those who voted for Mr. Hubbard are, Mr. President, Abercrombie, Crawford, Evans

**Kins, Wood, of the senate; Belser Bibb of L. Bridges Clark, Coopwood, Dale, Flournoy Harris, Hodges, Hudson, Lane, Lea, Lewis of F. Robinson, Townsend of m. Walker of D. and Wallis—31.**

Those who voted for Mr Kindric are Mr President, McVay, Powell, of the senate; Bonnell, Durrett, Lewis of m. and Smith of L.—7.

Those who voted for Mr King are, Mr Conner, Garth, McVay, Merriwether, Moore of J. Perry, Pickett, Smith, Vining and Watkins, of the senate; Mr Speaker, Ambriester Anderson, Banks, Barker, Belser, Brandon, Bridges Broadnax, Brown, Clough, Cole, Colgin, Cook, Dale, Duke, Dupuy, Durrett, Edmondson, Fearn, Flournoy, Gage, George, Harris, Hill, Lea, Mardis, Massey, Metcalf, Mims, McElderry, Parker, Penn, Perkins, Pickens, Richardson, Robinson, Rogers, Russell, Smith of J. T. T. T. Townsend of m. Walker of D. Walker of m. Weissinger, Wellbourne and Whitfield—57.

Those who voted for Mr McKernan are Messrs Wood, Clough, Gage, George, Hudson, Lewis of F. Satter and Wallis—8.

Those who voted for Mr Morton are Mr President, Abercrombie, Crawford, Garth, Perry, Pickett, Powell, Ross and Watkins; Messrs Anderson, Banks, Barton, Bibb of L. Bibb of m. Bonnell, Clough, Cook, Dale, Flournoy, Foster, Gage, Harris, Lane, Lewis of F. Lewis of m. Mobley, Parsons, Penn, Perkins, Robinson, Satter, Sanders, Smith of L. Sykes, Tarry and Townsend of m.—36.

Those who voted for Mr Rather are Messrs Abercrombie, Conner, Evans, Garth, Ross, Vining and Wallis, of the senate; Ambriester, Barker, Barton, Bibb of m. Bonnell, Broadnax, Clark, Cook, Dupuy, Edmondson, Hill, Hodges, Lewis of m. Mardis, Metcalf, Mobley, McElderry, Perkins, Rogers, Russell, Sykes, Wallis, Wellbourne and Whitfield—31.

Those who voted for Mr Sargeant are Messrs Evans, Hubbard, Merriwether, Moore of m. of senate; Belser, Bridges, Clark, Cole, Cook, Coopwood, Duke, Hudson, Lawler, Lewis of F. Metcalf, Mims, Pickens, Richardson, Smith of J. Walker of D. and Weissinger—21.

The two Houses then proceeded to vote again for two more of said Commissioners, two only having by the first balloting received a majority of the whole number of votes given. The following gentlemen being in nomination: William Barclay, James Brown, John Chisolm, Green K. Hubbard, Alimus Kindric, Thomas Gibson, Quin McLean, John F. Rather and Temple Sargeant. Upon counting the votes they stood thus: For Mr Barclay 25 votes—Brown 3—Chisolm 16—Gibson 20—Hubbard 32—Kindric 1—Morton 37—Rather 25—Sargeant 9.

Those who voted for Mr Barclay are Messrs Conner, Moore of J. Perry and Smith of the senate; Mr Speaker, Ambriester, Barker, Brandon, Clark, Colgin, Dupuy, Durrett, George, Lawler, Mardis, Massey, McElderry, Parker, Rogers, Russell, Smith of J. Walker of m. Weissinger, Wellbourne and Whitfield—25.

Those who voted for Mr Brown are Messrs McVay, Vining, and Wood of the senate; Anderson, Brandon, Brown, Mobley and Wellbourne—8.

Those who voted for Mr Chisolm are Messrs McVay, Merriwether and Wood of the senate; Mr Speaker, Barker, Broadnax, Brown, Colgin, Durrett, Fearn, George, Hill, Parsons, Penn, Smith of J. and T. T. T.—18.

Those who voted for Mr Gibson are Messrs Hubbard, Moore of m. of the senate; Mr Ambriester, Anderson, Banks, Barton, Belser, Clough, Cole, Coopwood, Duke, Edmondson, Gage, Hodges, Metcalf, Pickens, Richardson, Russell, Satter and Wallis—20.

Those who voted for Mr Hubbard are Mr President, Abercrombie, Crawford, Evans, Hubbard, Merriwether, Moore of J. Moore of m. Pickett, Powell, Smith, Wallis and Watkins of the senate; Messrs Belser, Bibb of L. Bridges, Clark, Coopwood, Dale, Flournoy, Foster, Harris, Hodges, Lane, Lea, Mims, Pickens, Richardson, Townsend of m. Walker of D. Walker of m. and Wallis—32.

Those who voted for Mr Kindric are Mr Smith of L.—1.

Those who voted for Mr Morton are Mr President; Abercrombie, Crawford, Garth, Perry, Pickett, Powell, Ross and Watkins of the senate; Messrs Banks, Barton, Bibb of L. Bibb of m. Bonnell, Clough, Cook, Dale, Flournoy, Foster, Gage, Harris, Hudson, Lane, Lea, Lewis of F. Lewis of m. Mobley, Parker, Parsons, Penn, Perkins, Satter, Sanders, Smith of L. Sykes, Tarry and Townsend of m.—37.

Those who voted for Mr Rather are Messrs Conner, Evans, Garth, Ross, Vining and Wallis of the senate; Messrs Bibb of m. Bonnell, Broadnax, Cook, Dupuy, Ed-

Hubbard, Quin Morton and John T. Rather being in nomination. Upon counting the votes they stood thus: For Mr Barclay 29—Gibson 9—Hubbard 47—Morton 50—Rather 36.

Those who voted for Mr Barclay are messrs Conner, Moore of J. Vining and Wood of the senate, Mr Speaker, Ambrister, Barker, Brandon, Brown, Clark, Colgin, Dupuy, Durrett, Gage, Lawler, Mardis, Massey, Metcalfe, McElderry, Parker, Parsons, Pickens, Rogers, Russell, Smith of J. Smith of L. Walker of M. Weissinger, Wellbourne—29.

Those who voted for Mr Gibson are messrs McVay and Moore of M. of the senate; messrs Ambrister, Anderson, Clough, Coopwood, Edmondson, Hodges and Wallis—9.

Those who voted for Mr Hubbard are Mr President, Abernethy, Crawford, Evans, Hubbard, McVay, Merriweather, Moore of J. Moore of M. Perry, Pickett, Powell, Ross, Smith, Wallball, Watkins and Wood of the senate; messrs Belser, Bibb of L. Bonnell, Bridges, Broadnax, Brown, Clark, Cole, Coopwood, Dale, Duke, Flournoy, Foster, Harris, Hill, Hodge, Hulson, Lane, Lea, Lewis of F. Mims, Pickens, Richardson, Satter, Soder, Townsend of M. Walker of D. Walker of M. Wall and Whitfield—47.

Those who voted for Mr Morton are Mr President, Abernethy, Crawford, Evans, Garth, Hubbard, Merriweather, Perry, Pickett, Powell, Ross and Watkins of the senate; messrs Anderson, Banks, Barton, Belser, Bibb of M. Bonnell, Clough, Colgin, Dale, Duke, Farn, Flournoy, Foster, Gage, George, Harris, Hulson, Lane, Lea, Lewis of F. Lewis of M. Mardis, Mims, Mobley, Parsons, Penn, Perkins, Satter, Sanders, Smith of L. Sykes, Tarver, Townsend of M. Walker of D. Weissinger and Whitfield—50.

Those who voted for Mr Rather are messrs Conner, Garth, Smith, Vining, Wallball of the senate; Mr Speaker, Banks, Barker, Barton, Bibb of M. Brandon, Broadnax, Bridges, Cole, Dupuy, Durrett, Edmondson, Farn, George, Hill, Lawler, Lewis of M. Massey, Metcalfe, Mobley, McElderry, Parker, Penn, Perkins, Richardson, Rogers, Russell, Smith of J. Sykes, Tarver and Wellbourne—36.

Mr Quin Morton and Mr Green K. Hubbard having received a majority of all the votes given were declared by Mr Speaker to be duly elected Commissioners from the counties bordering on the Tennessee river, to select and value the lands granted by the general government to the state of Alabama and to perform the duties required of them by the provisions of the act entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named.

After the completion of the election of the said four commissioners, the Senate withdrew to their own chamber, and Mr President resumed the chair.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Friday, January 23, 1829.*

The Senate met pursuant to adjournment.

Mr Perry, from the committee on the judiciary, to which was referred a bill to be entitled an act to alter the times of holding the courts in the sixth circuit, reported the same as amended; which was concurred in. *Ordered*, that the bill be made the order of the day for a third reading to-morrow.

Mr Evans, from the special committee to which was referred a bill to be entitled an act to amend an act entitled an act to establish and improve a certain road therein mentioned, approved, Jan. 13th, 1826, and for other purposes, reported the same as amended; which was concurred in. The bill was then read the third time and passed. *Ordered*, that the Secretary acquaint the House of Representatives therewith.

Mr Vining, from the committee on accounts and claims to which was referred a bill to be entitled an act more effectually to prevent frauds from being practised on the Treasury by persons holding claims against the state, asked leave to be discharged from the further consideration of the same; which was agreed to. On motion of Mr Vining, *ordered*, that the bill lie on the table till the first day of the next session of the general assembly.

Mr Hubbard introduced a bill to be entitled an act respecting bail in penal cases; which was read, and the rule requiring bills to be read on three several days

table; which was lost. The question was put on the adoption of the resolution, and determined in the affirmative. *Ordered*, that the Secretary acquaint the House therewith.

Mr Moore of J. from the committee on enrolled bills, reported as correctly enrolled, an act authorizing Wm. Burns and Wm. W. Pettit to continue their mill on Paintrock river; an act to repeal in part an act to locate the seat of justice for Fayette county, passed Jan. 12th, 1826; an act prescribing the duties of sheriffs and returning officers in holding elections and returning the votes of all persons voting on proposed alterations of the constitution of the state of Alabama; an act to extend the lines of Clarke county; an act the better to secure the collection of the state revenue; an act to compensate John Elliott for services rendered the state; an act to authorize Hector Garrett to emancipate certain slaves therein mentioned; an act to incorporate the Athens male academy in Limestone county; and, joint resolutions proposing amendments to the constitution of the state of Alabama, so as to limit the tenure of the judges office to six years. All of which were accordingly signed by Mr President.

The Senate resumed the consideration of the following resolutions offered yesterday by Mr Perry: *Resolved*, that it is the opinion of the Senate that the charges preferred against judges White, Saffold and Crenshaw, by Wm. Kelly, Esq. are not sufficiently sustained by proof to authorize an address to the governor for their removal. *Resolved*, that it is inexpedient to take further notice of said charges. Mr Hubbard called for a division of the questions arising upon said resolutions, and moved that the vote be taken first upon the adoption of the following: *Resolved*, that it is the opinion of the Senate that the charges preferred against Judge Saffold by Wm. Kelly are not sufficiently sustained by proof to authorize an address to the Governor for his removal. Mr Smith moved to amend the resolution so as to make it read thus: *Resolved*, that it is the opinion of the Senate that the charges preferred against Judge Saffold by Wm. Kelly Esq. are not sufficient to authorize an address to the governor for his removal; which was lost. Yeas 1—Nays 19.

The yeas and nays being desired, Mr Smith voted in the affirmative.

Those who voted in the negative are, Mr President, Abercrombie, Conner, Crawford, Evans, Garth, Hubbard, McVay, Merriwether, Moore of J. Moore of m. Perry, Pickett, Powell, Ross, Vining, Walthall, Watkins and Wood.

Mr Wood offered the following amendment to the resolution relating to the charges preferred against Judge Saffold: "Although Judge Saffold may have erred the error is deemed insufficient for a removal from office, the evidence against him not being sufficiently clear;" which was rejected. Yeas 4—Nays 16.

The yeas and nays being desired, those who voted in the affirmative are, messrs Hubbard, Moore of J. Moore of m. and Wood. — Those who voted in the negative are, Mr President, Abercrombie, Conner, Crawford, Evans, Garth, McVay, Merriwether, Perry, Pickett, Powell, Ross, Smith, Vining, Walthall and Watkins.

The vote was then taken on the adoption of the following resolution relating to Judge Saffold: *Resolved*, that it is the opinion of the Senate that the charges preferred against Judge Saffold by Wm. Kelly, Esq. are not sufficiently sustained by proof to authorize an address to the governor for his removal, and determined in the affirmative. Yeas 20—Nays none.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Conner, Crawford, Evans, Garth, Hubbard, McVay, Merriwether, Moore of J. Moore of m. Perry, Pickett, Powell, Ross, Smith, Vining, Walthall, Watkins and Wood.

The vote was then taken on the adoption of the following resolution, relating to Judges White and Crenshaw: *Resolved*, that it is the opinion of the Senate that the charges preferred against Judges White and Crenshaw, by Wm. Kelly, Esq. are not sufficiently sustained by proof to authorize an address to the governor for their removal, and decided in the affirmative. Yeas 15—Nays 5.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Crawford, Evans, Garth, Merriwether, Moore of M. Perry, Pickett, Powell, Ross, Smith, Vining, Walthall, Watkins — Those who voted in the negative are, messrs Conner, Hubbard, McVay, Moore of Jackson and Wood.

The question was then put on the adoption of the second resolution offered yesterday by Mr Perry, which is as follows: *Resolved*, that it is inexpedient to take further notice of said charges; and carried. Yeas 17—Nays 2.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Crawford, Evans, Garth, Hubbard, McVay, Merriwether, Moore of M. Perry, Pickett, Powell, Ross, Smith, Vining, Walldhall and Watkins.

Those who voted in the negative are, messrs Moore of J. and Wood.

Mr Abercrombie offered the following resolution: *Resolved*, that the judges implicated in the charges laid before this house by Mr Kelly, are entitled to the unimpaired confidence of the community. Mr Hubbard moved that the resolution lie on the table; which was carried. Yeas 11—Nays 3.

The yeas and nays being desired, those who voted in the affirmative are, messrs Crawford, Garth, Hubbard, McVay, Merriwether, Moore of J. Moore of M. Powell, Smith, Vining and Wood. — Those who voted in the negative are, Mr. President, Abercrombie, Evans, Perry, Pickett, Ross, Walldhall and Watkins. So the resolution was laid on the table.

A message from the House of Representatives by Mr Tunstall, their clerk: Mr President, the House of Representatives have passed the joint memorial to the congress of the United States, asking an extension of the circuit court system of the federal judiciary to the western and south-western states of the union, and have amended the same as herewith showing in which amendment they ask the concurrence of the senate. They have passed a bill which originated in the House of Representatives, entitled an act to authorize the governor to procure copies of the state map; in which they also desire your concurrence.

*Ordered*, that the Senate concur in the amendment made by the House of Representatives to the joint memorial to the congress of the United States, asking an extension of the circuit court system of the federal judiciary to the western and south-western states of the union. *Ordered*, that the secretary acquaint the house therewith.

A bill from the House of Representatives, entitled an act to authorize the governor to procure copies of the state map, was read and the rule requiring bills to be read on three several days being dispensed with, was read the second time. Mr Crawford moved to amend the bill by striking out 'one hundred and fifty,' and inserting 'seventy-five dollars' as the amount to be appropriated to that object, which was carried. The rule being further dispensed with, the bill was read a third time and passed — *Ordered* that the secretary acquaint the House of Representatives therewith.

A message from the House of Representatives by Mr Tunstall: Mr President the House of Representatives have adopted the following resolution in which they desire your concurrence: *Resolved* with the concurrence of the Senate, that the two houses will convene in the hall of the house of Representatives, this evening at 2 o'clock for the purpose of completing the elections commenced on yesterday under a former resolution of the two houses.

*Ordered*, that the Senate concur in said resolution, and that the secretary acquaint the House of Representatives therewith.

A bill to be entitled an act for the relief of Elisha Duvall, sheriff of Walker county; and an act investing the Mayor and Aldermen of the town of Tuscaloosa with the power of opening roads within the corporate limits of said town, were severally read the third time and passed: *Ordered*, that the secretary acquaint the House of Representatives therewith.

A bill to be entitled an act prescribing additional duties to assessors and tax collectors, and to procure a statistical history of this state, was read the second time — Mr Smith moved to amend the bill by requiring the assessors and tax collectors to take the number of deaf and dumb in this state, and make a return thereof to the comptroller's office. Mr Abercrombie moved that the bill and amendment lie on the table till the first day of June next, which was lost. Yeas 9—Nays 9.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Conner, Moore of M. Perry, Pickett, Ross, Vining and Walldhall — Those who voted in the negative are, messrs Crawford, Evans, Garth, Hubbard, McVay, Merriwether, Moore of J. Powell and Smith.

The amendment offered by Mr Smith to the bill was then adopted. Mr Conner moved to amend the bill by exempting St. Clair and Blount counties from its opera-

tion; which was carried. Mr Powell thereupon moved that the bill lie on the table till the first day of the next session; which was carried. Yeas 17—Nays 3.

The yeas and nays being desired, those who voted in the affirmative are Mr President, Abercrombie, Conner, Crawford, Garth, Hubbard, McVay, Moore of Jackson, Moore of m. Perry, Pickett, Powell, Ross, Vining, Walthall, Watkins and Wood.

Those who voted in the negative are, messrs Evans, Merriwether and Smith.

A bill to be entitled an act to alter the boundary line between the counties of Mobile and Washington; and an act to arrange, designate and establish the boundaries between the counties of Butler, Pike and Covington and for other purposes, were severally read the second time, and the rule requiring bills to be read on three several days being dispensed with, were read the third time and passed. *Ordered*, that the secretary acquaint the house therewith.

A bill to be entitled an act to alter the times of holding courts in the 4th circuit, was read the second time. Mr Moore of J. offered an amendment to the bill, changing the times of holding the fall terms of the courts in the 5th circuit. *Ordered*, that the bill and amendment lie on the table till to-morrow.

A bill to be entitled an act to exempt certain persons from performing military duty in this state therein named, was read the second time, and the rule being dispensed with by four fifths, was read the third time and passed. *Ordered*, that the secretary acquaint the house therewith.

Mr Powell called up the petition of M. D. Williams, together with the report made thereon by the committee on propositions and grievances. *Ordered* that the petition be recommitted to the same committee to examine and report thereon.

And the Senate adjourned till 2 o'clock this evening.

*Evening Session.*—The Senate met pursuant to adjournment at 2 o'clock.

A message from the House of Representatives by Mr Tunstall, their clerk: Mr President, I am instructed to inform your Honorable Body, that the House of Representatives are now ready, with the concurrence of the Senate, to proceed to the completion of the election of commissioners, and of a Medical Board commenced on yesterday pursuant to a previous resolution adopted by the two Houses.

Whereupon the Senate repaired to the Hall of the House of Representatives, and took the seats assigned to them: Mr President then announced the object of the meeting of the two Houses; and the two Houses then proceeded to the election of eight more commissioners, to select and value the lands granted by the General Government to the State of Alabama, pursuant to the law passed at the present session; the said commissioners to reside south of the counties bordering on the Tennessee river. The following persons being in nomination: Mr William Metcalfe, George C. King, James Hill, Elias Davis, William H. Terril, William Y. Higgins, William Howell, Richard Harrison, John Howard, George L. Medlock, John Johnson, Charles Bass, William H. Wilson, Walter Woodyard, James Woodruff, Washington Allen, John D. Rodgers, Archibald K. Smith, Thomas D. Wooldridge, Dabney McGehee, John A. Elmore, Philip Coleman, Wilson Ashley, Berriel Traywick, James Hall, Edwin Edwards, Grief Johnson, William Johnson, Walter Harkins, Aquilla Cavenah, William Cole, Micajah Williamson, Marston Mend. The two Houses proceeded to vote viva voce. Upon counting the votes, they stood thus: For Mr. Allen 25 votes, Astley 26, Bass 5, Cavenah 4, Cole 6, Coleman 17, Davis 7, Edwards 8, Elmore 45, Harkins 4, Hill 37, Higgins 22, Harrison 10, Howard 27, Howell 25, Hall 21, Johnson (Grief) 7, Johnson (Wm.) 8, Johnson (John) 11, King 39, Metcalf 53, Medlock 31, McGehee 21, Mend 13, Ross 11, Smith 31, Terril 45, Traywick 6, Wilson 14, Woodyard 15, Woodruff 41, Wooldridge 8, Williamson 32.

Messrs John A. Elmore, William Metcalfe and William H. Terril, having received a majority of the whole number of votes given, were declared by Mr Speaker to be duly elected commissioners to select and value the lands granted to the State of Alabama, by the General Government, to act and perform the duties required of them by the act entitled "an act to enable the State of Alabama to sell and dispose of certain lands therein named."

The two Houses then proceeded to vote again, for five of said commissioners, three only having been elected by the last vote given. The following persons be-

ing in nomination. Washington Allen, Wilson Ashley, Charles Bass, Philip Coleman, Elias Davis, Edwin Edwards, James Hill, William Y. Higgins, John Howard, William Howell, James Hall, George C. King, George L. Medlock, Henry McGhee, Archibald K. Smith, Walter Woodyard, James Woodruff, Micajah Williamson. Upon counting the votes given, they stood thus: For Mr Allen 32 votes, Ashley 30, Bass 3, Coleman 6, Davis 2, Edwards 5, Hill 39, Higgins 22, Howard 25, Howell 29, Hill 13, King 51, Medlock 30, McGhee 16, Smith 26, Woodyard 13, Woodruff 47, Williamson 34.

George C. King and James Woodruff, having received a majority of the whole number of votes given, were declared by Mr Speaker to be duly elected commissioners as aforesaid, under the above recited act.

The two Houses then proceeded to vote again for the election of three of said commissioners, two only having been duly elected by the last vote. The following persons being in nomination: Mr Washington Allen, Wilson Ashley, James Hill, John Howard, William Howell, George L. Medlock, Archibald K. Smith, Micajah Williamson. Upon counting the votes they stood thus: For Mr Allen 38 votes, Ashley 21, Hill 48, Howard 18, Howell 20, Medlock 31, Smith 26, Williamson 49.

Micajah Williamson and James Hill having received a majority of the whole number of votes given, were declared by Mr Speaker, to be duly elected commissioners as aforesaid, under the before recited act.

The two Houses then proceeded to vote a fourth time for one of said commissioners, two only having been elected by the last vote given. Mr Washington Allen, George L. Medlock and Archibald K. Smith, being in nomination. Upon counting the votes they stood thus: For Mr Allen 48, for Mr Medlock 19, for Mr Smith 13. Washington Allen having received a majority of the whole number of votes given, was declared by Mr Speaker, duly elected a commissioner, to select and value lands, &c. under the before recited act.

The two Houses then proceeded to the election of a Medical Board, consisting of three members, for the town of Tuscaloosa. Doctors James M. Davenport, James Guild, Samuel M. Meek, John Marrast and John R. Drish, being in nomination. Upon counting the votes they stood thus: For Dr. Davenport 53 votes, Drish 19, Guild 59, Marrast 21, Meek 41.

Mr Speaker then declared Dr. James M. Davenport and Dr. James Guild, duly elected members of the Medical Board of Tuscaloosa, they having received a majority of the whole number of votes given.

The two Houses then proceeded to the election of a third member of the medical Board, Doctors Marrast and Meek, having received an equal number of votes on the first ballot. Doctors John Marrast and Samuel M. Meek being in nomination. Upon counting the votes they stood thus: For Dr. Marrast 28. For Dr. Meek 33.

Doctor Samuel M. Meek having received a majority of the whole number of votes given, was declared by Mr Speaker, duly elected a member of the medical board, for the town of Tuscaloosa.

The two Houses having completed the said elections, the Senate then withdrew to their own chamber, and Mr President resumed the chair.

And then the Senate adjourned till to-morrow at 10 o'clock.

*Saturday January 24, 1829.*

The Senate met pursuant to adjournment.

Mr Vining presented the account of Grantland and Mitchell, which was referred to the committee on accounts and claims.

Mr Ross from the committee on the State Bank, to which was referred a bill to be entitled an act for the relief of the officers of the Bank of the State of Alabama, reported the same without amendment. The bill was then amended on Mr Powell's motion, and read the third time. Mr Perry offered the following amendment to the bill by way of rider: "provided the pay of said clerk so employed shall not exceed the sum of two dollars per day." Mr Hubbard moved to amend the amendment by striking out all, after the word *provided*, and inserting the words, "that such clerk shall not be paid for the time he may be so employed, more than is allowed to the present clerk for the same length of time;" which was carried. The amendment was read three several times and adopted. The question was then put "shall the bill pass?" and determined in the affirmative. Yeas 17—Nays 3.

The yeas and nays being desired, those who voted in the affirmative are, Mr. President, Abercrombie, Conner, Crawford, Evans, Garth, Hubbard, Merriwether, Moore of J. Moore of M. Pickett, Powell, Smith, Vining, Walthall, Watkins and Wood — Those who voted in the negative are, messrs. McVay, Ferry and Ross.

*Ordered*, that the title of the bill be as aforesaid and that it be sent to the House of Representatives for their concurrence.

A message from the House of Representatives by Mr. Toastall, their clerk: Mr. President, the House of Representatives have adopted the following resolution: *Resolved*, that with the concurrence of the Senate, the two houses will proceed on this evening at the hour of 7 o'clock to the election of two trustees for the university of Alabama, to fill the vacancies occasioned in the board of trustees by the resignation of the Hon. Nicholas Davis, a trustee within the fourth judicial circuit, and Col. Jack Shackelford within the third circuit. To which they desire the concurrence of the Senate. Mr. Smith moved that the resolution lie on the table; which was lost — Mr. Smith then moved to amend the resolution by striking out this evening at 7 o'clock, and inserting Monday next at 6 o'clock P. M.; which was also lost. Mr. Walthall moved to amend the resolution by striking out 7 and inserting half past 5 o'clock; which was carried. The resolution as amended was then concurred in — *Ordered*, that the secretary acquaint the house therewith.

Mr. Abercrombie introduced a bill to be entitled an act to change the boundary line between the counties of Monroe and Wilcox; which was read. Mr. Abercrombie then moved that the rule requiring bills to be read on three several days be dispensed with and that the bill be read a second time forthwith, and the question thereon being put, it was determined in the affirmative. Yeas 17 — Nays 3.

Those who voted in the affirmative are, Mr. President, Abercrombie, Conner, Crawford, Garth, Hubbard, McVay, Merriwether, Moore of J. Moore of M. Perry, Pickett, Ross, Vining, Walthall, Watkins and Wood — Those who voted in the negative are, messrs. Evans, Powell and Smith. The bill was accordingly read a second time and committed to the committee on county boundaries.

Mr. Watkins, from the special committee to which was referred a bill to be entitled an act to explain and to amend an act entitled an act regulating the licensing of physicians to practice and for other purposes, reported the same without amendment. The bill was then read the third time and passed. *Ordered*, that the title of the bill be as aforesaid and that it be sent to the house of representatives for their concurrence.

Mr. Moore of J. from the joint committee on enrolled bills, reported as correctly enrolled bills of the following titles, which originated in the house of representatives, to wit: an act to legalize registering certain deeds or conveyances of lands in this state; an act supplementary to an act entitled an act to authorize the sheriff or coroner of the county of Shelby to sell lands and slaves levied on by execution at the town of Montevallo, passed at the present session of the legislature; an act for the relief of Susannah Casey; an act to authorize George W. Stoneroad to manumit certain slaves therein mentioned; an act to divorce John Lindsay from his wife Abbey Lindsay; an act to divorce John Layman from his wife Rebecca Layman; an act to authorize the judge of the county court and commissioners of roads and revenue of Fayette county to levy an extra tax; and, an act to incorporate the trustees of the Wilcox society for the encouragement of literature. All of which were accordingly signed by Mr. President.

Mr. Smith, from the special committee appointed to memorialize the congress of the United States on the subject of the public lands, asked to be discharged from the further consideration of the same, the subject being embraced in a memorial from the House of Representatives; which was agreed to.

Mr. Perry offered the following resolution: *Resolved*, that the president of the board of trustees of the university of Alabama be requested to inform the Senate what number and description of buildings are included in the plan of the university adopted by the board of trustees and what sum the said buildings are estimated to cost when completed, and what will be the probable cost of finishing them, what number of professorships are to be established in said university at its commencement, with their salaries; which was adopted.



A message from the House of Representatives by Mr Tunstall: Mr President, the house of representatives have read a third time and passed a bill to be entitled an act to appoint canal commissioners for the improvement of the navigation of the Tennessee river and for other purposes.

A bill from the house of representatives to be entitled an act to appoint canal commissioners for the improvement of the navigation of the Tennessee river and for other purposes; was read a first time and ordered to be read a second time on Monday next.

A message from the house of representatives by Mr Tunstall; Mr President, the house of representatives concur in the amendment made by the Senate to the resolution proposing to go into the election of trustees of the university of Alabama.

Mr Powell offered the following resolution: *Resolved*, that the state architect be directed to report to the Senate at the present session of the general assembly whether the apartments in the state capital intended to be appropriated for the Senate and House of Representatives, are in such state of forwardness as to be ready for occupancy at the commencement of the next session of the legislature; which was adopted.

And then the Senate adjourned till this evening at three o'clock.

*Evening Session* — The Senate met pursuant to adjournment.

The following communication was received from the governor, by Mr Thornton, secretary of state:

EXECUTIVE DEPARTMENT. TUSCALOOSA, January 24, 1829.

The Hon. President and Members of the Senate:

Gentlemen. — I have the honor herewith to transmit to you a communication from the Harbormaster of the port of Mobile, giving information under the instruction of the board that *Joseph W. Moore*, Esq. has declined to serve in the board of portwardens, in addition to *Philip McLoskey*, Esq. whose resignation has been heretofore received and announced to you. I have the honor to be, most respectfully, your obedient servant.

(Signed)

JOHN MURPHY.

*Ordered*, that the said communication lie on the table.

Mr Ross offered the following resolution: *Resolved* with the consent of the House of Representatives, that the two houses will this evening, at the same hour they go into the election of two trustees of the university of the state of Alabama, proceed to elect a port warden for the port of Mobile to fill the vacancy occasioned by *Joseph W. Moore's* declining to serve as such; which was adopted. *Ordered*, that the secretary acquaint the house therewith.

Mr Abercrombie from the committee on county boundaries to which was referred a bill to be entitled an act to change the boundary line between the counties of Monroe and Wilcox, reported the same without amendment. *Ordered*, that the bill be engrossed and made the order of the day for a third reading on Monday next.

A message from the House of Representatives by Mr Tunstall: Mr President, the House of Representatives have passed a bill which originated in the Senate, entitled an act to explain and to amend an act entitled an act to regulate the licensing of physicians to practice and for other purposes, and have amended the same as herewith shown; in which they desire the concurrence of the Senate.

*Ordered*, that the Senate concur in the amendments made by the house to the last mentioned bill, and that the secretary acquaint the house therewith.

A message from the House of Representatives by Mr Tunstall: Mr President, the House of Representatives have passed a bill which originated in their house entitled an act making appropriations for certain claims against the state; in which they desire the concurrence of the Senate. They refused to concur in the resolution proposing to adjourn *sine die* this day at the hour of 6 o'clock P. M.

A bill from the House of Representatives, entitled an act making appropriations for certain claims against the state, was read, and the rule requiring bills to be read on three several days being dispensed with, was read the second time and referred to the committee on accounts and claims to consider and report thereon.

A message from the House of Representatives by Mr Tunstall: Mr President, the House of Representatives have adopted the following resolution in which they desire your concurrence. *Resolved*, that this general assembly highly appreciate the excellent and interesting map of Virginia presented by that commonwealth to the State of Alabama; that the exemplary taste which is exhibited in the execution of

the plan so creditable to the public spirit and intelligence of the citizens of Virginia in addition to the general utility of the work, renders it a model worthy of imitation and makes the present a valuable acquisition to the state of Alabama. They have passed joint resolutions to the congress of the United States requesting a survey of a canal route to connect the waters of the Tennessee and Coosa rivers. They have also passed a bill which originated in the Senate, entitled an act to change the times of holding the county courts of Tuscaloosa, and have amended the same by adding thereto sundry additional sections and also by amending the title of the bill; in which amendments they desire the concurrence of the Senate. They have also passed a bill which originated in their house entitled an act to emancipate a certain slave therein named; in which they also desire your concurrence. They have refused to read a second time a bill from the Senate, entitled an act respecting bail in penal cases.

*Ordered*, that the Senate concur in the resolution from the House of Representatives, relating to the map presented by the commonwealth of Virginia to this state.

*Ordered*, that the secretary acquaint the House of Representatives therewith.

*Ordered*, that the bill entitled an act to change the times of holding the county court of Tuscaloosa, together with the amendment made thereto by the House of Representatives, lie on the table.

Joint resolutions to the congress of the United States requesting the survey of a canal route to connect the waters of the Tennessee and Coosa rivers were read, and the rule requiring joint resolutions to be read on three several days being dispensed with, were read the second and third time forthwith and passed. *Ordered*, that the secretary acquaint the House of Representatives therewith.

A bill from the house entitled an act to emancipate a certain slave therein named, was read, and the rule requiring bills to be read on three several days being dispensed with, was read the second and third time and passed. *Ordered*, that the secretary acquaint the house therewith.

A bill to be entitled an act giving the clerk of the supreme court the same fees as are allowed by law to clerks of the circuit courts was taken up. Mr Crawford moved to amend the bill so as to allow the clerk of the supreme court fifty per cent on the fees allowed to clerks of the circuit courts for like services; which was lost. Yeas 8—Nays 10.

The yeas and nays being desired, those who voted in the affirmative are, messrs Abercrombie, Conner, Crawford, Merriwether, Powell, Vining, Walthall and Watkins.

Those who voted in the negative are, Mr President, Evans, Garth, Hubbard McVay, Moore of J. Moore of M. Perry, Ross and Wood.

The question was then put, shall the bill be engrossed for a third reading? and lost. Yeas 9—Nays 9.

Those who voted in the affirmative are, messrs Conner, Evans, Garth, Hubbard, McVay, Moore of M. Perry, Vining and Wood.—Those who voted in the negative are, Mr President, Abercrombie, Crawford, Merriwether, Moore of J. Powell, Ross, Walthall and Watkins. So the bill was lost.

*Ordered*, that the bills entitled an act to alter the times of holding courts in the 4th circuit; and an act to alter the times of holding courts in the 6th circuit lie on the table till Monday next.

And then the Senate adjourned till half past 5 o'clock this evening.

*Half past five o'clock*—The Senate met pursuant to adjournment.

A message from the House of Representatives by Mr Foustall, their clerk: Mr President, The House of Representatives concur in the resolution of the Senate, relating to the election of a Warden for the Port of Mobile, in place of Joseph W. Moore, who refuses to serve in that capacity. They are now ready to receive the Senate in their Hall, for the purpose of going into the elections contemplated by previous resolutions.

Whereupon, the members of the Senate proceeded to the Hall of the House of Representatives, and having taken the seats assigned them, and Mr President having announced the object of the meeting.

Both houses then proceeded to the election of a Trustee of the University for the third judicial circuit; Mr Samuel W. Mardis being in nomination.

Those who voted for Mr. Mardis are, Mr. President, Abercrombie, Conner, Crawford, Garth, Hubbard, McVay, Merriwether, Moore of J. Moore of M. Perry, Pickett, Powell, Ross, Walthall, Watkins and Wood of the senate; Mr. Speaker, Ambrister, Anderson, Banks, Barker, Barton, Bibb of L. Bibb of M. Bonnell, Brandon, Clark, Clough, Cole, Colgin, Coopwood, Dale, Duke, Dupuy, Durrett, Edmondson, Fearn, Flournoy, Foster, Gage, George, Harris, Hill, Hodges, Hudson, Lane, Lawler, Lea, Lewis of F. Lewis of M. Massey, Metcalfe, Mims, Mobley, McElderry, Parker, Parsons, Penn, Perkins, Pickett, Richardson, Sanders, Smith of J. Smith of L. Sykes, Townsend of M. Walker of D. Walker of M. Weissinger, Wilborne and Whitfield — Mr. Mardis having received a majority of the whole number of votes given, was declared duly and constitutionally elected Trustee of the University of the state of Alabama, for the third judicial circuit.

The two houses then proceeded to the election of a Trustee for the fourth judicial circuit. Mr. Daniel Coleman being in nomination.

Those who voted for Mr. Coleman are, Mr. President, Abercrombie, Conner, Crawford, Evans, Garth, Hubbard, McVay, Merriwether, Moore of J. Moore of M. Perry, Pickett, Powell, Ross, Walthall, Watkins, of the senate; Mr. Speaker, Ambrister, Anderson, Banks, Barker, Barton, Bibb of L. Bibb of M. Bonnell, Brandon, Clark, Clough, Cole, Colgin, Coopwood, Dale, Duke, Dupuy, Durrett, Edmondson, Fearn, Flournoy, Foster, Gage, George, Harris, Hill, Hodges, Hudson, Lane, Lawler, Lea, Lewis of F. Lewis of M. Mardis, Massey, Metcalfe, Mims, McElderry, Parker, Parsons, Penn, Perkins, Richardson, Sanders, Smith of L. Smith of J. Sykes, Townsend of M. Walker, of D. Weissinger, Wilborne and Whitfield. — Mr. Coleman having received a majority of the whole number of votes given, was declared duly and constitutionally elected Trustee of the University of the state of Alabama for the fourth judicial circuit.

The two houses then proceeded to the election of a Portwarden for the port and harbor of Mobile. Mr. Hiram Cheesbrough being in nomination.

Those who voted for Mr. Cheesbrough are, Mr. President, Abercrombie, Conner, Crawford, Evans, Garth, Hubbard, McVay, Merriwether, Moore of J. Moore of M. Perry, Pickett, Ross, Walthall and Watkins of the senate; Mr. Speaker, Ambrister, Anderson, Barton, Bibb of L. Bibb of M. Bonnell, Brandon, Bridges, Clark, Clough, Cole, Colgin, Coopwood, Dale, Duke, Dupuy, Durrett, Edmondson, Fearn, Flournoy, Foster, Harris, Hill, Hodges, Hudson, Lane, Lawler, Lewis of M. Mardis, Massey, Metcalfe, Mims, McElderry, Parker, Parsons, Penn, Perkins, Pickett, Richardson, Sanders, Smith of J. Smith of L. Sykes, Townsend of M. Weissinger, Wilborne and Whitfield — Mr. Cheesbrough having received a majority of the whole number of votes given, was declared duly and constitutionally elected Portwarden for the port and harbor of Mobile.

The elections being completed, the Senate withdrew, returned to their own chamber, and Mr. President resumed the chair.

On motion of Mr. Hubbard, *Ordered*, That five hundred copies of the bill entitled an act to enable the State of Alabama, to sell and dispose of certain lands therein named; be printed for the use of the Senate.

And then the Senate adjourned till Monday morning at 10 o'clock.

Monday, January 26, 1829.

The Senate met pursuant to adjournment.

Mr. Crawford presented the accounts of Dugald McFarlane and Thomas B. Grantland, for printing done for the Senate during the present session; which was referred to the committee on accounts and claims.

Mr. Garth presented the account of John Tatum, which was referred to the same committee.

Mr. Moore of J. from the joint committee on enrolled bills, reported as correctly enrolled an act for the relief of Benjamin S. Bunnley; an act for the relief of Jeremiah W. Thomas; and joint memorial to the Congress of the United States in favor of Col. David White; which were accordingly signed by Mr. President.

Mr. McVay from the committee on propositions and grievances, submitted the following report: The committee on propositions and grievances to whom was referred the petition of M. D. Williams, have had the same under consideration, and find that the Legislature at the session of 1826, made an allowance to him of one hundred and sixty-four dollars, as a compensation to close the unsettled accounts between the States of Alabama and Mississippi; a majority of the committee are of opinion, that additional compensation ought to be paid him for his services, and on extending into the merits of his claim, have agreed to allow him the sum of thirty-six dollars, in addition to the sum heretofore allowed, which will be a reasonable compensation for his services and labor as a commissioner on the part of this State, and the committee have directed me, to report a bill to be entitled an act to allow to M. D. Williams additional compensation for his services as a commissioner, to

close the unsettled accounts between the states of Alabama and Mississippi; which was read. The rule requiring bills to be read on three several days being dispensed with, the bill was read the second and third time forthwith and passed. *Ordered* that the title be as aforesaid, and that it be sent to the House for their concurrence.

A message from the House of Representatives, by Mr McClellan: Mr President, The House of Representatives have passed a bill which originated in their House entitled an act to amend an act entitled an act to reduce into one the several acts concerning roads, bridges, ferries and highways, passed January 12, 1827: in which they desire the concurrence of the Senate.

A bill from the House of titled an act to amend an act entitled an act to reduce into one the several acts concerning roads, bridges, ferries and highways, passed Jan. 12, 1827, was read, and the rule requiring bills to be read on three several days being dispensed with, was read the second and third time forthwith and passed. *Ordered*, that the secretary acquaint the House of Representatives therewith.

An engrossed bill to be entitled an act to alter the boundary line between the counties of Monroe and Wilcox, was read the third time. Mr Smith moved that the bill be committed to a special committee; which was lost. Yeas 5—Nays 13.

Those who voted in the affirmative are, messrs Garth, Merriwether, Moore of J. Powell, Smith.—Those who voted in the negative are, Mr President, Abercrombie, Conner, Crawford, Evans, McVay, Moore of m. Perry, Pickett, Ross, Walthall Watkins and Wood. So the motion was lost. Mr Smith then offered the following amendment to the bill, by way of rider: *And be it further enacted*, that all that part of Conecuh county west of Butler county and west of the range line between the ranges eight and nine east of the basis meridian of St Stephens be and the same is hereby added to the county of Monroe. *And b it further enacted*, that all officers civil and military residing within the bounds hereby added to Monroe county shall hold their offices and exercise the same powers and privileges, and be subject to the same rules and regulations as other officers of Monroe county. And the question being thereon taken by yeas and nays, it was decided in the negative. Yeas 2—Nays 17. Those who voted in the affirmative are, messrs Evans, Smith. Those who voted in the negative are, Mr President, Abercrombie, Conner, Crawford Garth, Hubbard, McVay, Moore of m. Moore of J. Perry, Pickett, Powell, Ross Walthall, Watkins and Wood.

The question was then put, shall the bill pass? and decided in the affirmative. Yeas 11—Nays 3. The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Conner, Evans, McVay, Moore of m. Perry Pickett, Ross, Walthall and Wood.—Those who voted in the negative are, messrs Crawford, Garth, Hubbard, Merriwether, Moore of J. Powell, Smith and Watkins.

So the bill was passed. *Ordered*, that the title be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

A message from the House of Representatives, by Mr McClellan: Mr President, the House of Representatives have passed a bill which originated in the Senate entitled an act in relation to the appointment and duties of trustees; and have amended the same as is herein shown: in which they desire the concurrence of the Senate. They have also passed bills, which originated in the House of Representatives, of the following titles, to wit: an act concerning the fees of clerks and sheriffs; an act to permit nonresident attorneys to practise in this state. They have also passed bills which originated in the Senate entitled an act to amend an act entitled an act to incorporate Lafayette academy in the village of Lagrange, and have amended the same in the manner herewith shown; and an act to incorporate Canton academy in the county of Wilcox.

*Ordered*, That the Senate concur in the amendments made by the House of Representatives to the bill entitled an act in relation to the appointment and duties of trustees. *Ordered*, that the secretary acquaint the House therewith.

*Ordered*, That the Senate also concur in the several amendments made by the House of Representatives to the bills entitled an act to amend an act entitled an act to incorporate the Lafayette academy in the village of Lagrange; and an act to incorporate the Canton academy in the county of Wilcox. *Ordered*, that the secretary acquaint the House of Representatives therewith.

A bill from the House of Representatives entitled an act concerning the fees of clerks and sheriffs, was read, and the rule requiring bills to be read on three several days being dispensed with, was read the second and third time and passed. *Ordered*, that the secretary acquaint the House of Representatives therewith.

A bill from the House of Representatives entitled an act to permit nonresident attorneys to practise in this state, was read the first time. Mr Pickett moved that the further consideration of the bill be indefinitely postponed; which was carried.

*Ordered*, That the bill entitled an act to change the times of holding courts in the sixth judicial circuit lie on the table.

A bill to be entitled an act to alter the times of holding courts in the fourth circuit was taken up. Mr Garth moved that the bill lie on the table till the first day of the next session; which was carried. Yeas 10—Nays 5.

The yeas and nays being desired, those who voted in the affirmative are messrs Cooter, Evans, Garth, McVay, Merriwether, Moore of m. Perry, Pickett, Walshall and Watkins.——Those who voted in the negative are, messrs Crawford, Hubbard Moore of J. Powell and Smith.

A bill to be entitled an act to appoint canal commissioners for the improvement of the navigation of the Tennessee river and for other purposes, was read the second time. Mr Powell having taken the chair: Mr President moved to strike from the first section of the bill the words 'two years' and insert 'one year,' where it relates to the term of office of the canal commissioners; which was carried. Mr President moved to strike from the seventh section of the bill the words 'upon a pledge of said lands or any part thereof,' where it authorizes the commissioners to pledge the lands donated to this state by the general government, as security for the payment of fifty thousand dollars, should it be necessary for them to borrow that amount to commence the contemplated improvement; which was carried. Mr Moore of J moved to strike from the same section the words 'fifty thousand dollars,' the amount which the commissioners are authorized by the bill to borrow in the event of its being necessary to do so; which was carried. Mr President moved to fill the blank created by Mr Moore's motion with 'twenty five thousand dollars;' which was lost. Mr Smith moved to fill the blank with 'ten thousand dollars;' which was carried. Mr Smith moved to amend the first section of the bill by striking therefrom the words 'but said commissioners shall only receive for their services such compensation as shall be sufficient to defray their expenses,' and to insert in lieu thereof the words 'said commissioners shall receive the sum of \$4 per day each whilst engaged in the discharge of the duties hereby assigned them;' which was carried. Mr Moore of J. offered the following amendment to the third section of the bill: 'And be it further enacted, that any powers herein granted to said commissioners may at any time be taken from them by the General Assembly;' which was adopted. Mr Pickett moved to strike out the third section of the bill, which is as follows: Sec. 3 And be it further enacted, that it shall be the duty of the said commissioners after ascertaining as near as practicable the expense of the construction of said canals and all other improvements, and ascertaining the cheapest and most durable manner of constructing the same, so as to comply with the requisitions of the act of congress, by making them capable of steamboat navigation, upon such notice as they may consider reasonable to contract with such person or persons as may offer to take the contracts for the execution of any of the requisite works contemplated in this act, and not to pay unreasonable prices therefor, in such lots, precincts or parts as may best in the opinion of said commissioners promote and advance the best interests of the state, as well as the faithful and speedy execution of the work: Provided, said commissioners shall not pay or contract to pay more than a full and reasonable value according to the estimates for any material part of said work; and provided further, that said commissioners shall not be authorized to let to contract or commence the construction of any part or parts of said canals or other works, which may be situated above the ferry at Florence, prior to the end of the next general assembly; which motion was carried. Yeas 11—Nays 9.

The yeas and nays being desired, those who voted in the affirmative are, messrs Abercrombie, Crawford, Evans, Hubbard, Merriwether, Moore of J. Moore of m.

**Perry, Pickett, Smith, Walthall** — Those who voted in the negative are, **Mr President, Conner, Garth, McVay, Powell, Ross, Vining, Watkins and Wood.**

And then the Senate adjourned till this evening at four o'clock.

*Evening Session* — The Senate met pursuant to adjournment.

**Mr Pickett** offered the following resolution: *Resolved*, That the bill providing for the appointment of Tennessee canal commissioners be referred to a special committee, with instructions so to amend the same as to authorize said commissioners to invest one half of the proceeds of the first instalment of the donated lands in the purchase of able bodied slaves, to the end that they may be employed in removing the obstructions in the Tennessee river, from Colbert's shoals to the ferry at Florence, and to authorize said commissioners to employ overseers, artists and mechanics in the prosecution of said works. **Mr McVay** moved to strike out all that part of the resolution authorizing the said commissioners to invest one half of the proceeds of the first instalment arising from the sale of the lands in the purchase of slaves; which was lost. Yeas 2—Nays 17.

The yeas and nays being desired, those who voted in the affirmative are, messrs **McVay and Moore of J** — Those who voted in the negative are, **mr President, Abercrombie, Conner, Crawford, Evans, Garth, Hubbard, Merriwether, Moore of m, Perry, Pickett, Powell, Ross, Smith, Walthall, Watkins and Wood**

The question was then put on the adoption of the resolution and decided in the affirmative. Whereupon messrs **Pickett, Hubbard and Powell** were appointed the committee.

The following communication was received from the State Architect.

*State Capital, January 26th. 1829.*—Sir: In obedience to a resolution of the Senate enclosed in your note of the 24th inst. calling on me to report the state of forwardness of the legislative halls, I would beg leave to inform that honorable body, that I have the fullest assurance of being able to complete the rooms, in question, by the commencement of the next session of the legislature, and to which end no exertion will be spared by their obedient humble servant. **WM. NICHOLS, Architect.**

*To F. S. Lyon, Esq. Secretary of the Senate.*

*Ordered*, that said communication lie on the table.

A message from the House of Representatives by **Mr McClellan**, their engrossing clerk: **Mr President**, the House of Representatives have passed a bill which originated in the Senate entitled an act to repeal in part an act approved January 13th 1828, and for other purposes. They have also passed bills which originated in the house of representatives entitled an act for the better organization of the Morgan cavalry; and, an act to divorce Benjamin D. Hassell from his wife Mary Hassell: in which they desire the concurrence of the Senate.

A bill from the house of representatives entitled an act to divorce Benjamin D. Hassell from his wife Mary Hassell, was read; and the rule requiring bills to be read on three several days being dispensed, with the bill was read a second and third time forthwith and passed by a constitutional majority. *Ordered*, that the secretary acquaint the house of representatives therewith.

A bill to be entitled an act for the better organization of the Morgan cavalry, was read; and the rule requiring bills to be read on three several days being dispensed with, the bill was read a second and third time forthwith and passed. *Ordered*, that the secretary acquaint the house of representatives therewith.

A message from the house of representatives by **Mr McClellan**, their engrossing clerk: **Mr President**, the house of representatives have postponed until the first day of the next session of the general assembly a bill to be entitled an act to change the boundary line between the counties of Monroe and Wilcox; which originated in the Senate. They have passed a bill which originated in the Senate entitled an act to amend an act entitled an act to authorize the sales of 16th sections and for other purposes, and have amended the same in the manner herewith shewn. They concur in the amendment made by the Senate to the bill to be entitled an act investing the mayor and aldermen of the town of Tuscaloosa with the power of opening roads within the corporate limits of said town, and have amended the same as herewith shewn. They have also passed a bill which originated in the Senate entitled an act to authorize the county court of Franklin county to levy a special tax for a certain

purpose therein mentioned. They have also adopted the following resolution: *Resolved*, with the concurrence of the Senate that the two houses of the general assembly will adjourn *sine die* on Thursday next at 5 o'clock p.m. They have passed bills which originated in their house of the following titles to wit: an act supplemental to an act entitled an act for the relief of Stith Evans of Greene county, passed at the present session of the general assembly; an act for the relief of Henry T. Anthony; an act to incorporate the Montgomery wharf and steamboat company; an act to establish a ferry at Galvestown in the county of Monroe, and for other purposes; an act prescribing the duties of the commissioners appointed to superintend the erection of the state capital; an act to incorporate an agricultural society in the town of Greensborough; an act to authorize the trustees of the university of the state of Alabama to sell and dispose of the unsold university lands; an act for the compensation of certain persons therein named; an act to emancipate a certain slave therein named; and, an act more effectually to prevent the profanation of the Sabbath by the loading and unloading of boats and other water craft at the port of South Florence in the county of Franklin. In all of which they desire your concurrence.

A bill from the House of Representatives, entitled an act for the compensation of certain persons therein named; was read the first time. Mr Hubbard moved that the bill lie on the table till the first day of June next; which was carried.

A bill to be entitled an act to emancipate a certain slave therein named; was read and ordered to a second reading to-morrow.

A bill to be entitled an act prescribing the duties of the commissioners appointed to superintend the erection of the state capital, was read; and the question being put, shall the bill be read the second time? it was decided in the negative.

A bill to be entitled an act to establish a ferry at Galvestown in the county of Monroe, and for other purposes, was read; and ordered to a second reading to-morrow.

A bill to be entitled an act for the relief of Henry T. Anthony, was read; and the rule requiring bills to be read on three several days being dispensed with, the bill was read the second and third time and passed. *Ordered*, that the secretary acquaint the house of representatives therewith.

A bill to be entitled an act supplemental to an act entitled an act for the relief of Stith Evans of Greene, passed at the present session of the general assembly, was read; and the rule requiring bills to be read on three several days being dispensed with, was read the second and third time and passed. *Ordered*, that the secretary acquaint the house of representatives therewith.

*Ordered*, That the Senate concur in the amendment made by the House of Representatives to their amendments to the bill entitled an act investing the mayor and aldermen of the town of Tuscaloosa with the power of opening roads within the corporate limits of said town. *Ordered*, that the secretary acquaint the House of Representatives therewith.

A bill to be entitled an act to authorize the trustees of the university of the state of Alabama sell and dispose of the unsold university lands, was read, and the rule requiring bills to be read on three several days being dispensed with, the bill was read the second time and committed to the committee on schools and colleges and school and college lands.

A bill to be entitled an act more effectually to prevent the profanation of the sabbath by the loading and unloading of boats and other water craft at the port of South Florence in the county of Franklin, was read the first time, and the question being put, shall the bill be read the second time? it was decided in the negative. Yeas 8—Nays 10.

The yeas and nays being desired, those who voted in the affirmative are, messrs Cawford, Evans, Hubbard, Merriwether, Pickett, Powell, Smith, and Wood.

Those who voted in the negative are, Mr President, Abercrombie, Conner Gauth, McVay, Moore of J. Perry, Ross, Walthall, Watkins. So the bill was lost.

A bill to be entitled an act to incorporate the Montgomery wharf and steamboat company, was read the first and second time and laid on the table.

A bill to be entitled an act to incorporate an agricultural society in the town of Greensborough, was read and the rule requiring bills to be read on three several days being dispensed with, was read the second and third time and passed. *Ordered*, that the secretary acquaint the House of Representatives therewith.

Mr Moore of J. moved to amend the resolution from the House of Representatives proposing, with the concurrence of the Senate, that the two Houses of the General Assembly will adjourn *sine die* on Thursday next, at 5 o'clock, p. m. by adding thereto the words 'provided they shall have completed the business before them.'

Mr Garth being in the chair, Mr President moved that the resolution and proposed amendment lie on the table till Thursday next; which was lost. Yeas 8—Nays 10.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Garth, McVay, Moore of J. Pickett, Powell, and Wood.

Those who voted in the negative are, messrs. Conner, Crawford, Evans, Hubbard, Merriwether, Perry, Ross, Smith, Walthall, and Watkins.

The question was then put on the adoption of the amendment offered by Mr Moore to the resolution, and decided in the negative. Yeas 8—Nays 10.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Abercrombie, Moore of J. Powell, Ross, Smith, Watkins and Wood.

Those who voted in the negative are, messrs. Conner, Crawford, Evans, Garth, Hubbard, McVay, Merriwether, Perry, Pickett, and Walthall.

The question was then put on concurring in the resolution from the House proposing to adjourn *sine die* on Thursday next at 5 o'clock, p. m. and decided in the affirmative. Yeas 13—Nays 5.

Those who voted in the affirmative are, messrs. Conner, Crawford, Evans, Garth, Hubbard, McVay, Merriwether, Perry, Pickett, Ross, Smith, Walthall and Watkins.—Those who voted in the negative are, Mr President, Abercrombie, Moore of J. Powell and Wood. So the resolution was concurred in. *Ordered*, that the secretary acquaint the House of Representatives therewith.

Mr Moore of J. introduced a bill to be entitled an act supplementary to an act entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named, passed the present session of the General Assembly; which was read the first and second time and laid on the table till tomorrow.

Mr Crawford presented the account of Donald McFarlane against the state for certain printing done for the comptroller's office during the present session; which was referred to the committee on accounts and claims.

And then the Senate adjourned till 10 o'clock tomorrow.

*Tuesday morning; January 27, 1829.*

The Senate met pursuant to adjournment.

Mr Walthall, from the committee on inland navigation, to which was referred a resolution instructing them to inquire into the expediency and propriety of forthwith creating by law a board of commissioners for the purpose of commencing the contemplated improvements to the navigation of the Tennessee river, asked to be discharged from the further consideration thereof, the subject being embraced in a bill from the House of Representatives, now before the Senate; which was agreed to.

Mr Moore of J. from the joint committee on enrolled bills, reported as correctly enrolled an act to change the times of holding the courts of commissioners of roads and revenue in the county of Franklin; an act to exempt certain persons from performing military duty in this state therein named; an act for the relief of Wm. May and James Reynolds; an act to alter the boundary line between the counties of Mobile and Washington; an act for the relief of Elisha Duvall, sheriff of Walker county; an act to arrange, designate and establish the boundaries between the counties of Butler, Pike and Covington, and for other purposes; an act for the payment of Martin Wells; and joint memorial to the congress of the United States asking relief for the purchasers of public land: all of which were accordingly signed by Mr President.

Mr Crawford, from the committee on schools and colleges and school and college lands, to which was referred a bill to be entitled an act to authorize the trustees of the university of Alabama to sell and dispose of the unsold university lands, reported the same as amended; which was concurred in by the House. The bill was then read the third time and passed. *Ordered*, that the secretary acquaint the House therewith.

Mr Ross from the special committee to which was referred so much of the Governor's annual communication as relates to the tariff, submitted the following report and resolutions:



The special committee to whom was referred that part of the Governor's message which relate to the late imposition of an increased tariff on certain importations, have had the same under consideration, and have instructed me to make the following report: That, with becoming deference and respect for the General Government, but with the sincerity becoming freemen they are constrained to say the act passed at the last session of congress imposing additional duties on certain importations, contains principles and details which deeply affect, in their opinion, the rights and interests of almost every class of citizens in the southern sections of the Union; whilst the tendency of its operation must be to decrease the general commercial prosperity of the government and reduce its revenue. Your committee have always believed that the true and legitimate object of taxation is revenue, to be raised according to the emergencies of the country, and in strict pursuance of the spirit of our constitution and laws. Immediately after the late war with Great Britain, for the purpose of affording increased facilities to the General Government by adding to its revenue, and also to afford encouragement to the manufactures in the country, the national legislature, as a measure of policy as well as an act of justice, established a tariff of duties, which, whilst it did not operate severely on the other great interests of the community, afforded, by the restrictions it imposed on foreign commerce, protection to those who had been induced to invest capital in manufacturing establishments. It was then supposed the protection thus afforded, and at the time deemed ample, would have satisfied the manufacturing interest; but the course since pursued shows how delusive has been the expectation. That the object aimed at and constantly kept in view by the manufacturing interest, was a monopoly, the creation and establishment of which was to be effected through the medium and instrumentality of increased duties on foreign importations, which in fact amounted to their prohibition and exclusion from our country, at the same time lessening the public revenue, from the attendant and concomitant decrease of commerce and navigation; whilst the people of the south were oppressed by the imposition of heavy burdens in the shape of prohibitory duties, to foster, protect and promote a particular interest. Your committee believe that the power 'to lay and collect taxes, duties and imposts,' which is given by the constitution to congress, was not granted that it might be so exercised as to cherish and elevate one class at the expense of all the other classes of our citizens. They believe also that the clause in the constitution which imposes on congress the great duty of 'promoting the general welfare,' was not intended that it should be so exercised as to impose extravagant taxes to operate as prohibitions and restrictions on trade for the ostensible purpose of promoting one exclusive interest at the national expense, and to impose heavy burdens on the many to give to the few the benefits of a monopoly. They believe that such a course is inconsistent with that sacred duty; because, if we prohibit directly, or what will produce the same result, if we extravagantly tax foreign productions, they cannot be imported into our country, or if imported contrary to the intent of the prohibition, those articles which are consumed by the poor or more laborious classes of our inhabitants (coarse cottons and woollens) are loaded with enormous duties, whilst those used almost exclusively by the rich are taxed at comparatively low rates. Then the same spirit of patriotism which taxed the many for the benefit of a few, has also laid burdens on the poor and exempted the rich. The operations of this law will inevitably produce jarring collisions between the great manufacturing and agricultural interests of the country. It arrays in hostile attitude the one against the other, when they ought to co-operate. It subjects the industry of the laboring part of the community to the arbitrary and interested arbitrament of another. In fact it raises up one interest and prostrates every other. It lessens confidence in the protecting influence of the government, because the people are oppressed when the burdens imposed are not equally distributed, and when laws imposing taxes, having sectional bearings, are resorted to. The people of the south are almost exclusively agriculturalists. They have few or no manufactories. Can it promote those feelings of common interest on which our union was founded, and which is its strongest cement, to lay onerous duties on the consumptions of the inhabitants of the south, to establish great work shops in other parts of the country? Your committee think not. They are of opinion that the act of congress passed at their last session imposing an increased tariff on certain importations, ought to be repealed, or so modified as to be founded and adapted to the wants, wishes and feelings of the various interests of the community. Your committee, therefore, propose the adoption of the following resolutions:

Resolved by the Senate and House of Representatives of the State of Alabama in General Assembly convened, That the tariff of 1828 is in its operation impolitic and unjust, producing the most unhappy effects on the interests of the great body of our citizens by its exclusive bearings on them; prostrating agriculture, commerce and navigation, while it cherishes and elevates manufacture; and which is an exercise, on the part of the general government, of a power not delegated by the constitution under which we live, and too well calculated to disturb the harmony of the union.

Resolved, That all duties imposed by congress on imports, not for revenue but to control the industry of the country, are contrary to the spirit of the constitution.

Resolved, That when the general government transcends the powers delegated to it by the constitution, the legitimate mode of opposition becoming the dignity of a sovereign state is by respectful remonstrance, and that open and unqualified resistance should only be the dernier resort.

Resolved, That our Senators in congress be instructed, in the name of the State of Arizona, to record on the journals of that body a solemn protest against the tariff act of 1828 as unequal, unjust and oppressive in its operation.

Mr Perry offered the following amendment to the resolutions: *Resolved*, that the governor be requested to forward to each of our senators in the congress of the United States a copy of the for-going remonstrance and resolutions; which was adopted. Mr Pickett moved further to amend the third resolution by striking therefrom the following words: 'and that open and unqualified resistance should only be the dernier resort.' And the question being put thereon, it was decided in the affirmative. Yeas 10—Nays 9.

Those who voted in the affirmative are, Mr President, Crawford, Garth, Hubbard, M Vay, Moore of m. Pickett, Powell, Smith and Watkins. — Those who voted in the negative are, messrs Abercrombie, Conner, Evans, Merriwether, Moore of J. Perry, Ross, Walthall and Wood.

Mr Abercrombie moved that the report and resolutions lie on the table till the 1st day of the next session of the general assembly; which was lost. And the question being thereon taken by yeas and nays, was decided in the negative. Yeas 6, nays 13.

Those who voted in the affirmative are, messrs Abercrombie, Crawford, Evans, Hubbard, Merriwether and Moore of J. — Those who voted in the negative are, Mr President, Conner, Garth, M Vay, Moore of m. Perry, Pickett, Powell, Ross, Smith, Walthall, Watkins and Wood.

The question was then put on the adoption of the report and resolutions, and decided in the affirmative. Yeas 13—Nays 5.

The yeas and nays being desired, those who voted in the affirmative are, Mr President, Conner, Garth, Hubbard, M Vay, Moore of m. Perry, Pickett, Powell, Ross, Smith, Walthall and Wood. — Those who voted in the negative are, messrs Abercrombie, Crawford, Evans, Merriwether and Moore of J. So the report and resolution was adopted. *Ordered*, that the same be conveyed to the House of Representatives for their concurrence.

The following communication was received from his excellency the governor, by James I. Thornton, secretary of state:

EXECUTIVE DEPARTMENT, TUSCALOOSA, JANUARY 26, 1829.

The Hon. the President and Members of the Senate:

Gentlemen—It affords me great pleasure to give the information which is requested by your Honorable Body in the resolution of the 24th inst. The buildings which compose the plan adopted by the Trustees of the University, are as follows, viz: Two double blocks of Professor's Houses, each block affording accommodations for four Professors; a Chapel or Centre building for all the public exercises of the Institution, for ordinary lectures and to contain the Library; a Chemical Laboratory; six buildings for the accommodation of the students, and two or more Halls or Boarding Houses. The completion of this plan, it is estimated will cost one hundred and thirty two thousand dollars. The buildings which are thought necessary to be erected before the Seminary goes into operation, which have been contracted for and are now in a state of preparation or progress are the following, viz: One double block of Professor's houses, to accommodate four Professors, two Dormitories or buildings for the students, the Chapel, the Laboratory and one Hall or Boarding House. It is estimated that these buildings will cost about sixty thousand dollars. The other buildings will be erected only when the progress of the Institution may require them, and when the necessary funds may be conveniently obtained. The Dormitories or houses for the students of the University, which are now erecting, are each 97 feet long and 35 feet wide, containing each 12 sitting rooms or rooms for study, with two bed rooms to each sitting room. Four students may be consigned to one sitting and two bed rooms, if there should be a temporary occasion to crowd them and two or three would be accommodated in them with great convenience. The two Dormitories now contracted for and in progress, will accommodate 96 students with 4 in a room, 72 with 3, and 48 with 2 in a room. When the prospects of the University will require it, two other Dormitories, at some future time, will be erected, 142 feet long and 35 feet wide, and in its further progress the remaining two other

Dormitories 97 feet long and 35 feet wide, similar to those which are now erecting and which as respects the Dormitories will complete the plan adopted by the Trustees. These buildings when there may be occasion to complete them all will contain 320 students, each consisting of one sitting room and two bed rooms, 25' with 3' and 16' with 2' in a room. It is not contemplated to have more than 2 or 3 in a room, when the means of the University will admit of providing more convenient, and perhaps more beautiful accommodation. The remaining block of Professors' houses will be built, when the Board of Trustees find it expedient to establish Professorships, other and in addition to those established at the commencement of the Institution. The basement story of the Chapel or central building will be devoted to all the public exercises, commencements, and joint exercises and lectures. The first story will contain the Library of the Institution, and the building will also serve as an Astronomical Observatory. In the Laboratory will be placed the Chemical and Philosophical apparatus, with convenient lecture rooms for the Chemical and Mathematical Professors, a Museum, a Cabinet of Minerals, &c. The Hall will be built from time to time, as the necessities or convenience of the Institution may require. It is not supposed that it will be necessary to build other Dormitories than those which are now building for two or three years after the Institution goes into operation. The plan is essentially progressive, and will have the advantage of being executed one part after another, only as the great object in view may require them.

It is intended by the Board of Trustees to establish four Professorships at the commencement, viz: 1st of Ancient Languages including Ancient and Modern History, Geography, &c. 2nd of Mathematics and Natural Philosophy, including all their higher and principal Branches. 3rd of Chemistry, including those Branches of Analytical science intimately connected with it, and the application of Chemistry to the Arts and Agriculture. 4th a Professorship including Bell letters, Metaphysics, Moral Philosophy, Logic, Political Economy, and perhaps a final review of the higher branches of kindred science. It is designed that the Professors of Language and of Mathematics should each be assisted by a tutor. These will compose the provision which is designed to be made for the instruction of the Institution at its commencement. The salaries of the Professors are not to fall short of \$1000 each a year, and this sum is considered sufficient to command the best talents and generally acquirements which we can hope to obtain. It may be proper here to mention, that the Trustees conceive, that the Institution will go into operation the 1st of October, 1810. Their measures are predicated upon this expectation, and there seems to be no reason to fear that this expectation will be disappointed. I hope I have sufficiently answered the inquiries which your honorable body have been pleased to make, with reasonableness, if not entire accuracy, and think proper to confine myself to them, lest I might fall into an un-called-for and unnecessary prolixity, to which such an interesting subject will strongly allure the imagination.

I have the honor to be most respectfully, your obedient servant

JOHN MURPHY.

*Ordered*, That the communication lie on the table.

Mr Abercrombie, from the committee on county boundaries, asked to be discharged from the further consideration of all subjects committed to that committee; which was agreed to.

On motion of Mr Merriwether, *Ordered*, that Benjamin James have leave to withdraw his petition to emancipate certain slaves.

Mr Perry asked leave to withdraw certain petitions from Dallas county, in relation to county boundaries; which was agreed to.

Mr Perry, from the special committee to which was referred a bill to be entitled an act to appoint canal commissioners for the improvement of the navigation of the Tennessee river and for other purposes, reported the same with the following amendment: *And be it further enacted*, that the receiver of the monies arising from the sales of lands authorized by an act of the present session of the general assembly enacted in act to enable the state of Alabama to sell and dispose of certain lands therein named, shall be authorized to receive sound, healthy and able bodied slaves in payment for said lands at their fair value: provided, that the said receiver shall not receive more than three hundred slaves in payment for land, and provided, that the said receiver shall not in any event give more than five hundred dollars for any slave, except he be a mechanic, the value of which said slaves if not agreed upon between the receiver and purchaser of lands shall be assessed by the receiver and register, and if they cannot agree some third disinterested person shall be added, and the value assessed by a majority of the three shall be the price which shall be allowed for said slave, and if the owner will not take such price he shall be required to pay

in money for his lands. *And be it further enacted*, that said slaves when purchased may, by said receiver, be hired out until such time as the commissioners hereby appointed shall be prepared to put them to labor in the removal of the obstructions in the Tennessee river. *And be it further enacted*, that the said commissioners shall have power to add to the number of slaves hereby intended to be purchased any number which they may think may be needed for the purpose of carrying on the work of improvement hereby intended; provided, they do not expend more money in the purchase of slaves than half the amount of proceeds of sales of said lands which may be paid on the first instalment. *And be it further enacted*, that the said commissioners shall be authorized, as soon as the manner of removing the obstructions to the navigation of the Tennessee river has been approved by the President of the United States, to employ such number of workmen as may be necessary to do and perform the several sorts of work required, together with a suitable number of overseers to overlook said slaves, and shall commence the work of improvement at the lowest point of obstruction in the Tennessee river within this state, and shall continue up the same, and shall remove the obstructions to the navigation as they progress upwards, so as to make the same suitable for the running of steamboats. *And be it further enacted*, that the said commissioners shall have power to appoint some one of the overseers to contract for and furnish provisions and clothing for said slaves, and to furnish the overseers of the several parcels of hands a sufficient quantity of provisions and clothes, &c. as the same may be needed, and the said commissioners shall have power to do all needful acts for feeding, clothing and furnishing medical aid to said slaves, and all expenses shall be paid out of the proceeds of the sales of said lands. And the question being put on said amendment, it was decided in the negative. Yeas 3—Nays 16.

*The yeas and nays being desired, those who voted in the affirmative are, messrs Pickett, Powell and Smith.—Those who voted in the negative are, Mr President Abercrombie, Conner, Crawford, Evans, Garth, Hubbard, McVay, Merriwether Moore of J. Moore of m. Perry, Ross, Walthall, Watkins and Wood.*

Mr Perry moved that the bill lie on the table till the first day of the next session; which was lost. Yeas 8—Nays 11.

*Those who voted in favor of the motion are, messrs Crawford, Evans, Hubbard Merriwether, Moore of m. Perry, Walthall, and Watkins.—Those who voted in the negative are, Mr President, Abercrombie, Conner, Garth, McVay Moore of J. Pickett, Powell, Ross, Smith and Wood.*

*Ordered*, That the bill be recommitted to a special committee, consisting of messrs Garth, McVay, and Moore of J. to consider and report thereon.

A message from the House of Representatives, by Mr Tunstall: Mr President, The House of Representatives have postponed till the first day of the meeting of the next general assembly the bill which originated in the Senate entitled an act the better to secure impartial trials by jury in certain cases. They have passed a bill which originated in the Senate entitled an act to change the times of holding the fall terms of the courts in the second judicial circuit; and have amended the same as herewith shown: in which they desire the concurrence of the Senate.

*Ordered*, That the Senate concur in the amendments made by the House of Representatives to the bill entitled an act to change the times of holding the fall terms of the courts in the second judicial circuit. *Ordered*, that the secretary acquaint the House of Representatives therewith.

And then the Senate adjourned till 3 o'clock this evening.

*Evening Session.*—The Senate met pursuant to adjournment.

A message from the House of Representatives, by Mr Tunstall: Mr President, The House of Representatives have passed a bill which originated in the Senate entitled an act to change the times of holding the county courts of Jackson county and for other purposes, and have amended the same in the manner herewith shown: in which amendments they desire your concurrence.

Mr Perry offered an amendment to the amendment made by the House to said bill changing the time of holding the fall term of the county court of Marengo; which was adopted. The amendment as amended was then concurred in. *Ordered*, that the secretary acquaint the House of Representatives therewith.

A message from the Governor, by John I. Thornton: Mr President, I am instructed by the Governor to inform your honorable body that he did on the 26th inst. approve and sign the following bills: an act to compensate John Elliot for services rendered the state; an act prescribing the duties of sheriffs and returning officers in holding elections and returning the votes of all persons voting on proposed alterations of the constitution of the state of Alabama; joint resolutions proposing amendments to the constitution of the state of Alabama, so as to limit the tenure of the judges' office to six years; an act the better to secure the collection of the state revenue; an act to extend the limits of Clarke county; an act to amend in part the 4th section of an act passed at the last session of the general assembly appointing commissioners for Dale county and for other purposes; an act to alter and amend an act entitled an act to establish a permanent road from Florence in the county of Lauderdale to Athens in the county of Limestone; an act to divorce Ambrose Sanders from his wife Elizabeth Sanders; an act for the relief of sheriffs and other officers; an act to change the time of holding the county courts of Franklin county; an act to amend the act incorporating the town of Florence; and joint memorial to the congress of the United States in behalf of Sally Holton and William Merrill: all of which originated in the Senate.

Mr Garth presented the account of John Tatum, for a box of candles; which was referred to the committee of accounts and claims.

Mr Garth, from the committee to which was referred a bill to be entitled an act to appoint canal commissioners for the improvement of the navigation of the Tennessee river and for other purposes, reported the same with sundry amendments; which were concurred in. Mr Perry moved further to amend the bill by striking out 'five' and inserting 'three,' as the number of canal commissioners to be elected; which was carried. Mr Garth then moved that the bill be read a third time forthwith; and the question being thereon put, it was determined in the affirmative. Yeas 14—Nays 5.

*Those who voted in the affirmative are, Mr President, Abercrombie, Conner Garth, McVay, Merriweather, Moore of J. Pickett, Powell, Ross, Smith, Walthall, Watkins and Wood.—Those who voted in the negative are, messrs Crawford, Evans, Hubbard, Moore of m. and Perry.*

The bill was accordingly read a third time, and the question being put on the passage thereof, it was decided in the affirmative. Yeas 12—Nays 7.

*Those who voted in the affirmative are, Mr President, Abercrombie, Conner Garth, McVay, Moore of J. Pickett, Powell, Ross, Smith, Watkins and Wood.*

*Those who voted in the negative are, messrs Crawford, Evans, Hubbard, Merriweather, Moore of m. Perry and Walthall.* So the bill was passed. Ordered, that the secretary acquaint the House of Representatives therewith.

Mr Moore of J. from the joint committee on enrolled bills, reported as correctly enrolled an act to authorize the governor to procure copies of the state map; an act to amend an act entitled an act to establish and improve a certain road therein mentioned, approved Jan. 13, 1826; an act for the relief of Stith Evans of Greene county; an act to repeal in part an act approved Jan. 13, 1828, and for other purposes; an act to alter and change a certain part of the road leading from Florence in Lauderdale county to Athens in Limestone county; an act to explain and amend an act to regulate the licensing of physicians to practice and for other purposes; an act to amend an act entitled an act to incorporate Lafayette academy in the village of Logrange; joint memorial to the congress of the United States, asking an extension of the circuit court system of the federal judiciary to the western and southwestern states of the union; joint memorial of the two houses of the General Assembly of the state of Alabama to the Congress of the United States, requesting that the unappropriated lands within the state of Alabama may be ceded to the state for the purposes of internal improvement and education therein: all of which were accordingly signed by Mr President.

A message from the House of Representatives by Mr Tunstall, their clerk: Mr President, the house of representatives have passed bills which originated in the Senate entitled an act supplementary to an act entitled an act to incorporate the Cahawba navigation company; and, an act to compel the trustees of the town of

Moulton to keep their streets in repair, and for other purposes, and have amended the latter bill by adding thereto an additional section. In which they desire the concurrence of the Senate. They have also passed a bill which originated in the house of representatives entitled an act to amend an act entitled an act to authorize executors and administrators to make titles to real estate sold by their testators or intestate, passed the 24th Dec. 1812. In which they ask the concurrence of the Senate. They have also passed a bill which originated in the Senate entitled an act to prevent extortion by public officers, and for other purposes, and have amended the same in the manner herewith shewn.

*Ordered*, that the Senate concur in the amendments made by the house of representatives to the bill entitled an act to compel the president and trustees of the town of Moulton to keep their streets in repair, and for other purposes. *Ordered*, that the secretary acquaint the house of representatives therewith.

*Ordered*, that the Senate concur in the amendments made by the house to the third section of the bill entitled an act to prevent extortion by public officers and for other purposes. Mr Perry moved that the Senate concur in the amendments made by the house to said bill by adding thereto sundry additional sections; which was lost. *Ordered*, that the Senate disagree to said amendments and that the secretary acquaint the house of representatives therewith.

A bill to be entitled an act to amend an act entitled an act to authorize executors and administrators to make titles to real estate sold by their testators or intestate, passed the 24th of Dec. 1812. was read a first time. Mr Perry moved that the bill lie on the table till the first day of the next session; which was carried.

Mr Ross, from the committee on accounts and claims to which was referred a bill to be entitled an act making appropriations for certain claims against the state, reported the same with sundry amendments; which were concurred in. The bill was further amended on Mr Perry's motion and laid on the table till to-morrow.

On motion of Mr Powell, the bill entitled an act to change the times of holding the county court of Tuscaloosa county, together with the amendments made thereto by the house of representatives was taken up. The amendments made by the house of representatives to the bill, were further amended on Mr Powell's motion, and agreed to. *Ordered*, that the secretary acquaint the house of representatives therewith.

Mr Powell from the special committee to which was referred a bill to be entitled an act to amend an act entitled an act to suppress the evil and pernicious practice of fleecing, passed Dec. 12, 1822, reported the same without amendment. The bill was then read a third time and rejected.

A bill to be entitled an act to incorporate the Montgomery wharf and steamboat company, was read the third time and passed. *Ordered*, that the secretary acquaint the house of representatives therewith.

*Ordered*, that the Senate concur in the several amendments made by the house of representatives to the bill entitled an act to amend an act entitled an act to authorize the sale of 16th sections, and for other purposes. *Ordered*, that the secretary acquaint the house of representatives therewith.

A bill to be entitled an act to emancipate a certain slave therein named; and, an act to establish a ferry at Gains town and for other purposes; were severally read a second time, and the rule requiring bills to be read on three several days being dispensed with, the bills were severally read a third time and passed. *Ordered*, that the secretary acquaint the house of representatives therewith.

And then the Senate adjourned till to-morrow morning at 10 o'clock.

*Wednesday, January 28, 1829.*

The Senate met pursuant to adjournment.

A bill to be entitled an act making appropriations for certain claims against the state, was taken up.

Mr Ross, from the committee on accounts and claims reported that said committee had instructed him to offer two additional sections by way of amendment to the bill; which was agreed to. Mr Perry offered an amendment to the bill providing for the payment of \$100 to M. D. Tomison for his salary as Quartermaster General in 1826; which was rejected. Mr Powell offered an amendment to the bill

providing for the payment of \$200 to Wm. G. Parish for office rent for the Secretary of State and Comptroller; which was adopted. The bill was then read the third time and laid on the table.

A message from the house of representatives by Mr Tunstall: Mr President, the house of representatives concur in the amendments of the Senate made to the bill entitled an act to appoint canal commissioners for the improvement of the navigation of the Tennessee river, and for other purposes by striking from the sixth line of the first section the words 'two years' and inserting 'one year' where it relates to the term of office of the commissioners. They also concur in the amendment of the Senate by striking from the latter part of the 1st section the words 'but said commissioners shall only receive for their services such compensation as may be sufficient to defray their necessary expenses incurred in the discharge of the duties of their office,' and inserting the words 'and said commissioners shall receive for their services the sum of \$4 per day each whilst engaged in the discharge of the duties hereby assigned them.' They disagree to the amendment of the Senate proposing to strike from the last line of the 2d section the words 'preparatory to letting the same in contract,' and inserting the words 'and report the same with any other necessary information to the next general assembly, during the first week of their session.' They also disagree to the amendments of the Senate proposing to strike out the 3d, 4th, 5th, 6th, 7th and 8th sections of the bill, and to strike out 'five' and insert 'three' as the number of commissioners, and to strike out the word 'canal' in the caption of the bill. And they have appointed on their part Messrs Bile of E. Fearn and Parsons a committee to confer with such committee as may be appointed on the part of the Senate on the subject of their disagreement to the amendments aforesaid. They have passed a bill which originated in the Senate entitled an act to authorize the employment of an additional clerk of the bank of the state of Alabama, and amended the same as will be seen thereby. They have also passed a bill which originated in the house of representatives entitled an act supplemental to an act passed at the present session of the general assembly entitled an act to enable the state of Alabama to sell and dispose of certain lands therein named; and, an act to ascertain the voice of the people of Pickens county relative to the removal of their present seat of justice: in which they desire the concurrence of the Senate.

The question was put on concurring in the resolution of the House of Representatives, appointing a committee on their part, to confer with such committee as may be appointed by the Senate, on the subject of the disagreement between the two Houses, in relation to the amendments made by the Senate to the bill entitled an act to appoint canal commissioners for the improvement of the navigation of the Tennessee river, and for other purposes; and decided in the negative. Yeas 7 Nays 10.

Those who voted in the affirmative are, Mr President, Abercrombie, Conner, Gorth, McVay, Ross and Wood.

Those who voted in the negative are, Messrs Crawford, Evans, Hubbard, Merriweather, Moore of M. Perry, Pickett, Smith, Walthall and Watkins.

A bill to be entitled an act supplemental to an act, passed at the present session of the General Assembly, entitled an act to enable the State of Alabama, to sell and dispose of certain lands therein named, was read the first and second time. Mr V. Abbott moved that the bill lie on the table till the first day of June next; which was carried.

A bill to be entitled an act to ascertain the voice of the people of Pickens county, relative to the removal of their present seat of justice, was read, and the rule requiring bills to be read on three several days being dispensed with, was read the second and third time forthwith and passed. *Ordered*, That the Secretary acquaint the House of Representatives therewith.

*Ordered*, That the Senate concur in the amendment made by the House of Representatives, to the bill entitled an act to authorize the employment of an additional clerk of the Bank of the State of Alabama. *Ordered*, That the Secretary acquaint the House of Representatives therewith.

Abercrombie called up the bill to be entitled an act to alter the times of holding the courts in the 6th circuit. The bill was then read the third time and passed. *Ordered*, That the Secretary acquaint the House of Representatives therewith.

A message from the House of Representatives by Mr Tunstall: Mr President The House of Representatives concur in the amendment made by the Senate, to the bill entitled an act to authorize the Trustees of the University of Alabama, to sell and dispose of the unsold University lands. They concur in the amendment made by the Senate, to their amendment to the bill entitled an act to change the time of holding the county courts of Jackson county, and for other purposes.

Mr Perry called up the bill entitled an act making appropriations for certain claims against the State. The bill was further amended on Mr Garch's motion and passed. *Ordered*, That the Secretary acquaint the House of Representatives therewith.

Mr Moore of J. from the joint committee on enrolled bills, reported as correctly enrolled: an act for the better organization of the Morgan Cavalry; an act supplemental to an act entitled an act for the relief of Stith Evans of Greene county, passed at the present session of the General Assembly; an act to divorce Benjamin S. Hassell from his wife Mary Hassell; an act to emancipate a certain slave therein named; an act to amend an act entitled an act to reduce into one the several acts concerning roads, bridges, ferries and highways, passed January 12, 1827; an act to incorporate Canton Academy, in the county of Wilcox, and for other purposes; an act concerning the fees of clerks and sheriff; an act to authorize the Trustees of the University of the State of Alabama, to sell and dispose of the unsold University lands; an act to change the times of holding the fall terms of the courts in the 2nd judicial circuit; an act in relation to the appointment and duties of Trustees; an act to authorize the county court of Franklin county, to levy a special tax for certain purposes therein mentioned; and an act to incorporate the Mobile marine railway and insurance company: all of which were accordingly signed by Mr President.

A message from the House of Representatives by Mr Tunstall: Mr President, the House of Representatives insert on their second amendment to the bill entitled an act to prevent extortion by public officers.

*Ordered*, that the Senate recede from their disagreement to said amendment, and that the Secretary acquaint the House of Representatives therewith.

And then the Senate adjourned till 3 o'clock this evening.

*Evening Session.*—The House met pursuant to adjournment.

Mr Merriwether offered the following resolution: *Resolved*, that a committee be appointed on the part of the Senate to act with such committee as may be appointed by the House of Representatives to wait on his excellency the governor and inform him that the two houses will be ready to adjourn *sine die* on Thursday evening the 29th instant, if he has no further communications to make; which was adopted; whereupon Messrs Merriwether, Perry and Walhall were appointed the committee. *Ordered*, that the Secretary acquaint the House of Representatives therewith.

Mr Conner introduced a bill to be entitled an act to establish an election precinct therein named, and for other purposes; which was read. And the rule requiring bills to be read on three several days being dispensed with, the bill was read the second and third time and passed. *Ordered*, that the title of the bill be as aforesaid, and that it be sent to the House of Representatives for their concurrence.

A message from the House of Representatives by Mr Tunstall: Mr President, the House of Representatives have adopted the following resolution in which they desire your concurrence. *Resolved*, with the concurrence of the Senate that the resolution heretofore adopted for the adjournment of the two houses to-morrow evening be rescinded, and that the two houses will adjourn on Saturday evening next *sine die* unless they sooner complete the business before them. They have passed a bill which originated in the House of Representatives, entitled an act to change the time of holding the circuit courts in the counties of Shelby and St Clair. They have passed a bill which originated in the Senate, entitled an act to increase the salary of the quartermaster general, and have amended the same in the manner herewith shewn; in which they desire the concurrence of the Senate. They concur in the amendments made by the Senate to bills entitled an act making appropriations for certain claims against the state; and an act to alter the times of holding courts in the sixth judicial circuit. They have passed a bill which originated in their house, entitled an act making appropriations for the year 1829. In which they desire the concurrence of the Senate.



Mr Perry moved that the Senate disagree to the resolution from the House of Representatives relating to a change in the time appointed for the adjournment of the two Houses; which was carried.

*Ordered*, that the Senate concur in the amendment made by the House of Representatives to the bill entitled an act to increase the salary of the quartermaster general. *Ordered*, That the secretary acquaint the House of Representatives therewith.

A bill to be entitled an act to change the time of holding the circuit courts in the counties of Shelby and St Clair was read, and the rule requiring bills to be read on three several days being dispensed with, it was read the second and third time and passed. *Ordered*, that the secretary acquaint the House therewith.

A bill to be entitled an act making appropriations for the year 1829, was read, and the rule requiring bills to be read on three several days being dispensed with, was read the second time. Mr Ross moved to strike out '\$250,' the amount allowed the Secretary of State for copying the journals and superintending the printing of the laws and journals, &c. and to insert in lieu thereof '\$275;' which was carried. Yeas 8—Nays 6.

Those who voted in the affirmative are, Mr President, Abercrombie, Crawford, Merriwether, Perry, Powell, Ross and Walthall.

Those who voted in the negative are, messrs Evans, Garth, Hubbard, McVay, Moore of m. and Smith.

The rule being further dispensed with, the bill was then read the third time and passed. *Ordered*, that the secretary acquaint the House therewith.

And then the Senate adjourned till tomorrow morning at 9 o'clock.

*Thursday, January 29, 1829.*

The Senate met pursuant to adjournment.

Mr McVay introduced a bill to be entitled an act supplemental to an act entitled an act to enable the State of Alabama to sell and dispose of certain lands therein named, passed the present session of the General Assembly; which was read the first and second times. Mr Perry moved that the further consideration of the bill be postponed till the first day of the next session; which was carried. Yeas 9—Nays 7.

Those who voted in the affirmative are, messrs Crawford, Garth, Hubbard, Merriwether, Moore of J. Moore of M. Perry, Smith and Walthall.

Those who voted in the negative are, Mr President, Conner, McVay, Powell, Ross, Watkins and Wood.

Mr Moore of J. from the joint committee on enrolled bills, reported, as correctly enrolled, an act investing the mayor and aldermen of the town of Tuscaloosa with the power of opening roads within the corporate limits of said town; an act to incorporate an agricultural society in the town of Greensborough; an act for the relief of Henry T. Anthony; an act to amend an act entitled an act to authorize the sales of sixteenth sections and for other purposes; an act to compel the president and trustees of the town of Moulton to keep their streets in repair and for other purposes; an act supplementary to an act to incorporate the Cahawba navigation company; joint resolutions to the congress of the United States, requesting the survey of a canal route to connect the waters of the Tennessee and Coosa rivers; an act to emancipate a certain slave therein named; an act to incorporate the Montgomery wharf and steamboat company; and an act to establish a ferry at Gainstown and for other purposes; all of which were accordingly signed by Mr President.

On motion of Mr Moore of J. *Ordered*, That Mr Garth be added to the committee on enrolled bills.

A message from the House of Representatives by Mr Trustall: Mr President, The House of Representatives concur in the resolution of the Senate appointing a committee to wait on the Governor to know if he has any further communications to make to the General Assembly; and have appointed on their part messrs Perkins, Bridges and Anderson.

Mr Merriwether, from the joint committee appointed to wait on the Governor and inform him that the two Houses of the General Assembly will be ready to adjourn this evening if he has no further communications to make, reported that the committee have performed the duty assigned them, and received for answer from the Governor that he had no further communications to make.

A message from the House of Representatives by Mr Tunstall: Mr President, The House of Representatives have passed a joint memorial to the Congress of the United States, asking a postponement of the lands sales in Jackson and Madison counties, and a change of the law regulating such sales, and to allow to occupants a preemption right, which originated in the Senate. They have passed bills, which originated in their House, of the following titles, to wit: An act to divide the 21st regiment of the militia of this state and for other purposes; an act to amend an act entitled an act to provide for the establishment of the permanent seat of justice in the county of Walker, passed 15th Jan. 1828; an act to reduce into one the several acts allowing fees to sheriffs; an act to provide for the sale of a lot of land in the town of Cahawba to Joseph Babcock; an act to amend the several acts concerning the town of Whitesburgh, in the county of Madison; an act to amend an act concerning forcible entries and detainers; an act to repeal in part and amend a certain act therein named concerning strays; an act to establish a certain election precinct therein named; and an act to amend an act concerning the town of Triana, in the county of Madison, passed 22d Dec. 1826: in all of which they desire your concurrence — They have passed a bill which originated in the Senate, entitled an act to extend the laws of Alabama over the territory acquired by the treaty of the Indian Springs, and have amended the same by striking therefrom the preamble, and by adding thereto sundry additional sections; and also by amending the title of the bill in the manner herewith shewn; in which they desire your concurrence. They have also passed a bill, which originated in the Senate, entitled an act to allow Major Duke Williams additional compensation for his services as a commissioner to close the unsettled accounts between the states of Alabama and Mississippi, and have amended the same in the manner herewith shewn; in which they desire your concurrence. They concur in the amendment made by the Senate to their amendments to the bill entitled an act to provide for taking the sense of the people of the county of Tuscaloosa upon the subject of removing the site of the courthouse and for other purposes. They have laid on the table till Monday next, a bill which originated in the Senate, entitled an act to establish an election precinct therein named, and for other purposes. They have passed joint resolutions proposing amendments to the constitution of the state of Alabama, so as to have biennial sessions of the General Assembly thereof, and have amended the same in the manner herewith shewn; in which they desire your concurrence.

The following message was also received from the House of Representatives by Mr Tunstall: Mr President, the House of Representatives have instructed me to return to the Senate a bill which originated in the House of Representatives entitled an act to appoint canal commissioners for the improvement of the navigation of the Tennessee river and for other purposes, and to refer your honorable body to the message which accompanied the request for a conference concerning the matters of disagreement on that bill for information concerning the proceedings of the House of Representatives in relation to the amendments made thereto by your honorable body. — *Ordered*, that the bill lie on that table.

A bill entitled an act to divide the 21st regiment of militia of this state and for other purposes, was read, and the rule requiring bills to be read on three several days being dispensed with, was read the second and third time forthwith, amended by way of rider and passed. *Ordered*, that the secretary acquaint the House of Representatives therewith.

On motion of Mr Coaner, *Ordered*, that the Senate concur in the several amendments made by the House of Representatives to the bill entitled an act to extend the laws of Alabama over the territory acquired by the treaty of the Indian Springs. *Ordered*, that the secretary acquaint the House therewith.

Mr Crawford, from the joint committee on enrolled bills, reported as correctly enrolled an act to change the times of holding the county courts of Jackson county and for other purposes; an act to increase the salary of the quartermaster general; an act to authorize the employ of an additional clerk of the bank of the state of Alabama: all of which were accordingly signed by Mr President.

Mr Walthall moved that the Senate disagree to the amendment made by the House of Representatives to the joint resolutions proposing amendments to the constitution of this state, so as to have biennial sessions of the general assembly there

by striking out 'four years,' the proposed term of service of the senators, and inserting two years: which was carried. Yeas 12—Nays 7.

*Those who voted in the affirmative are, Mr President, Abercrombie, Crawford Evans, Hubbard, Merriwether, Pickett, Powell, Ross, Smith, Walthall and Wood.*

*Those who voted in the negative are messrs Conner, Garth, McVay, Moore of J. Moore of m. Perry and Watkins.*

Mr Powell being in the chair: Mr President moved that the Senate disagree to the amendment made by the House to said resolutions by adding the words 'that each county existing at the adoption of the constitution shall have at least one representative,' &c.; which was carried. Yeas 12—Nays 7.

*Those who voted in the affirmative are, Mr President, Abercrombie, Crawford Evans, Garth, Hubbard, McVay, Moore of J. Perry, Pickett, Ross and Walthall.*

*Those who voted in the negative are, messrs Conner, Merriwether, Moore of m. Powell, Smith, Watkins and Wood.*

Mr President moved that the Senate disagree to the last amendment made by the House of Representatives to said resolutions, which is as follows: 'provided also, that should there be any county not entitled to separate representation by the ratio which may from time to time be fixed for representation and be not entitled by existing provisions, all the residuums of the adjoining counties or so many as may be requisite shall be carried to such county, and if when added to the white inhabitants of the same the number be equal to the ratio fixed by law, such county shall be entitled to separate representation; and provided farther, that no new county shall be established by the general assembly which shall reduce the county or counties or either of them from which it shall be taken to a less content than 756 square miles, nor shall any county be laid off of less contents. Every new county as to the right of representation shall be considered as the county or counties from which it was taken until entitled by its numbers, or by its numbers and the residuums of adjoining counties carried thereto, to the right of separate representation; provided no new county shall be formed or no old county so reduced as to lessen the number of white population below the then ratio of representation;' which motion was carried. Yeas 13—Nays 6.

*Those who voted in the affirmative are, Mr President, Abercrombie, Crawford, Garth, Hubbard, McVay, Moore of J. Moore of m. Pickett, Powell, Smith, Walthall and Wood — Those who voted in the negative are, messrs Conner, Evans, Merriwether, Perry, Ross and Watkins*

*Ordered*, that the secretary acquaint the House of Representatives therewith.

*Ordered*, that the Senate concur in the amendments made by the House of Representatives to the bill entitled an act to allow M. D. Williams additional compensation for his services as a commissioner to close the unsettled accounts between this state and the state of Mississippi. *Ordered*, that the secretary acquaint the House of Representatives therewith.

Bills from the House of Representatives of the following titles, to wit: an act to amend an act concerning the town of Triana in the county of Madison, passed the 22d Dec. 1826; an act to establish a certain election precinct therein named; an act to repeal in part and amend a certain act therein named concerning strays; an act to provide for the sale of a lot of land in the town of Cabawba; and, an act to amend an act entitled an act to provide for the establishment of the permanent seat of justice in the county of Walker, passed the 15th Jan. 1828; were severally read the first time. The rule requiring bills to be read on three several days being dispensed with, by a majority of four-fifths, the foregoing bills were severally read the second and third time and passed. *Ordered*, that the secretary acquaint the house of representatives therewith.

A bill to be entitled an act to amend an act concerning forcible entries and detainers; was read the first time. Mr Hubbard moved that the farther consideration of the bill be postponed till the first day of the next session of the general assembly; which was carried.

Messrs Abercrombie and Ross availed themselves of their constitutional right to have the following document entered upon the Journal: The undersigned having voted in favor of a bill accepting and disposing of a donation of lands for the improvement of the Tennessee river, and having at several previous sessions given

in assent to the proposition that congress had not the right either directly or indirectly to carry on internal improvements in a state, give the following as their reasons for such vote: The opposite doctrine has been sustained by congress for several successive years by such majorities as to convince the undersigned that the system is fully adopted. Other states are receiving the proceeds of the public lands for similar purposes; the course of government expenditure has always been northward, and though Alabama has uniformly opposed the system, the undersigned can see no reason why she should be deprived of a share of its benefits after it has been adopted and triumphantly sustained by the general government. The proceeds of the very lands in question would doubtless be applied to a similar purpose in some more favored section of the country. The experience of the last ten years proves that the South have been annually drained of immense sums by the present land system, and the duty on imposts, and while other parts of the union have profited by its treasure, none of the expenditures of the government have ever returned in the shape of government favors. To have voted for the rejection of the donation would have been to have punished Alabama for her present notions of constitutional power.

[Signed]

*James Abercrombie, Jack P. Ross.*

A bill to be entitled an act to amend the several act concerning the town of Whitesburg in the county of Madison, was read the first time and ordered to lie on the table till the first day of the next session of the general assembly.

A bill to be entitled an act to reduce into one the several acts allowing fees to sheriffs, was read the first and second time. Mr Evans moved that the further consideration of the bill be postponed till the first day of the next session; which was carried.

A message from the house of representatives by Mr. Tunstall, their clerk: Mr. President, the house of representatives have passed a bill which originated in their house entitled an act to appropriate and set apart the interest accruing to the state each and every year upon \$100,000, funds of the university of Alabama for the education of the extreme poor of the state and for other purposes; in which they desire your concurrence.

The bill mentioned in the foregoing message was read the first time. Mr Powell being in the chair, Mr President moved that the further consideration thereof be postponed till the first day of the next session; which was carried. Yeas 10—nays 5.

Those who voted in the affirmative are, Mr President, Abercrombie, Crawford, Evans, Hubbard, Merriwether, Pickett, Powell Smith and Wood — Those who voted in the negative are, messrs Conner, McVay, Perry, Ross, and Watkins.

A message from the house of representatives by Mr Tunstall: Mr President, the house of representatives have passed bills which originated in that house of the following titles, to wit: an act to divorce Margaret Trimble from her husband Robert C. Trimble; an act supplemental to an act passed at the present session of the general assembly entitled an act to extend the term of the Mobile circuit court; an act to repeal in part and amend an act entitled an act defining the liabilities of endorsers and for other purposes, approved the 15th Jan. 1828; an act to incorporate the town of Cottonport; an act amendatory of an act entitled an act establishing schools in the county of Mobile, passed Jan. 10, 1826; an act to amend the law now in force in relation to the change of venue in civil causes and for other purposes; and, an act for the relief of the legal representatives of Charles Peerson. They concur in the amendments of the senate to the bill entitled an act to divide the 21st regiment of the militia of the state, and for other purposes. They have passed a report and joint resolutions on the subject of the tariff of 1828, which originated in the senate, and have amended the same as herewith shewn. They have also passed a bill which originated in the senate entitled an act to divorce Robert C. Price from his wife Elizabeth Price.

A bill to be entitled an act to amend the law now in force in relation to the change of venue in civil cases, and for other purposes, was read the first time.— Mr Powell in the chair, Mr President moved that the rule requiring bills to be read on three several days be dispensed, and that the bill be read a second time forthwith; which was lost. Yeas 7—Nays 7.

Those who voted in the affirmative are, Mr President, Abercrombie, Perry, Powell, Ross, Walthall and Wood.—Those who voted in the negative are, messrs Crawford, Evans, Garth, Merriwether Moore of J. Pickett, and Smith.

Mr Smith moved that the further consideration of the bill be postponed till the meeting of the next general assembly; which was carried. Messrs Hubbard and McVay being witness in a case likely to be affected by the bill were excused from voting.

Bills from from the House of Representatives of the following titles to wit: an act to incorporate the town of Cottonport; an act amendatory of an act entitled an act establishing schools in the county of Mobile, passed January the 10th, 1826; an act to repeal in part and amend an act entitled an act defining the liability of indorsers and for other purposes; an act to divorce Margaret Trimble from her husband Robert C. Trimble; and an act for the relief of the legal representatives of Charles Peerson; were severally read a first time. The rule requiring bills to be read on three several days being dispensed with, the bills were severally read the second and third times and passed. *Ordered*, that the secretary acquaint the House of Representatives therewith.

Mr Crawford from the joint committee on enrolled bills, reported as correctly enrolled an act to amend an act entitled an act to authorize the sales of sixteenth sections and for other purposes; an act to prevent extortion by public officers and for other purposes; an act to establish a certain election precinct therein named; an act making appropriations for certain claims against the state; an act to alter the times of holding the courts in the sixth circuit; an act to repeal in part and amend a certain act therein named concerning strays; an act concerning the town of Triana in the county of Madison, passed the 22d of Dec. 1826, and an act to divide the 21st regiment of the militia of this state, all of which were accordingly signed by Mr President.

Mr Abercrombie moved that the Senate concur in the amendments made in the House of Representatives to the reported joint resolutions on the subject of the tariff of 1828; which was carried. *Ordered*, that the secretary acquaint the House therewith.

A message from the house of representatives by Mr Tunstall: Mr President, the house of representatives have passed bills which originated in the house entitled an act to repeal an act authorizing the removal of the Tombeckbe bank; an act to change the name of and legitimate a certain person therein named; and, an act to secure the testimony of absent witnesses in certain cases therein specified, in which they desire your concurrence.

A bill to be entitled an act to change the name of and legitimate a certain person therein named, was read and the rule requiring bills to be read on three several days being dispensed with, was read the second and third time and passed. *Ordered*, that the secretary acquaint the House of Representatives therewith.

A bill to be entitled an act to repeal an act authorizing the removal of the Tombeckbe bank, was read the first time. Mr Smith moved that the rule requiring bills to be read on three several days be dispensed with, and that the bill be read the second time forthwith; which was lost. Yeas 11—Nays 4.

Those who voted in the affirmative are, messrs Crawford, Evans, Garth, Hubbard, McVay, Merriwether, Perry, Pickett, Smith, Walthall and Wood.

Those who voted in the negative are messrs Abercrombie, Powell, Ross, and Watkins. So the motion was lost; a majority of four fifths being necessary. *Ordered*, that the bill lie on the table.

A bill to be entitled an act to secure the testimony of absent witnesses in certain cases therein specified, was read the first time. Mr Hubbard moved that the further consideration of the bill be postponed till the first day of the next session; which was carried. Yeas 10—Nays 7.

Those who voted in the affirmative are, Mr President, Crawford, Garth, Hubbard, McVay, Merriwether, Powell, Smith, Walthall and Wood.

Those who voted in the negative are, messrs Abercrombie, Conner, Evans, Perry, Pickett, Ross and Watkins.

A message from the House of Representatives by Mr Tunstall: Mr President, the House of Representatives recede from their amendment made to the joint resolutions proposing amendments to the constitution of this state so as to have biennial sessions of the general assembly so far as said amendment contemplates an alteration in the size of the counties, and they adhere to all their other amendments made to said resolutions.

Mr Merriwether moved that the Senate adhere to their disagreement to the amendments made by the House of Representatives to said resolutions; which was carried.

*Ordered*, that the secretary acquaint the House of Representatives therewith.

A message from the House of Representatives by Mr Tunstall: Mr President, the House of Representatives have passed a bill which originated in that house, entitled an act making further appropriations for the payment of the officers of the present general assembly and for other purposes. In which they desire the concurrence of the Senate. They have also passed bills which originated in the Senate, entitled an act to repeal in part and amend an act entitled an act to amend an act entitled an act concerning roads, highways, bridges and ferries in the county of Mobile, approved 15th January, 1828, and an act approving and confirming the contract made by the governors of the states of Mississippi and Alabama in relation to the unsettled accounts between the two states.

A bill to be entitled an act making further appropriations for the payment of the officers of the general assembly, was read; and the rule requiring bills to be read on three several days being dispensed with, the bill was read the second time, amended on Mr Perry's motion, and read the third time and passed. *Ordered*, that the secretary acquaint the House of Representatives therewith.

A message from the House of Representatives by Mr Tunstall: Mr President, the House of Representatives have passed a bill which originated in that house, entitled an act for the relief of the securities of Daniel Harrison, taxcollector for the county of Bibb, for the year 1828. In which they desire the concurrence of the Senate.

The bill from the House of Representatives, entitled an act for the relief of the securities of Daniel Harrison, taxcollector for the county of Bibb, for the year 1828, was read; and the rule requiring bills to be read on three several days being dispensed with, the bill was read the second and third time forthwith and passed. *Ordered*, that the secretary acquaint the House of Representatives therewith.

A message from the House of Representatives by Mr Tunstall: Mr President, the House of Representatives have passed a bill which originated in the Senate, entitled an act for the relief of David M. Smithson, and have amended the same in the manner herewith shewn; in which they desire your concurrence. They have also passed a bill which originated in the Senate, entitled an act to authorize the judge of the county court and commissioners of revenue and roads of Limestone county, to appoint some suitable person to transcribe certain parts of the records of the county court aforesaid.

*Ordered*, that the Senate concur in the amendment made by the House of Representatives to the bill entitled an act for the relief of David M. Smithson. *Ordered*, that the secretary acquaint the House of Representatives therewith.

A message from the House of Representatives by Mr Tunstall: Mr President, The House of Representatives have passed a bill, which originated in that House, entitled an act to authorize James Taylor, of St Clair county, to keep in repair a bridge across Wills creek in said county and for other purposes: in which they desire the concurrence of the Senate.

A bill to be entitled an act to authorize James Taylor, of St Clair county, to keep in repair a bridge across Wills creek in said county and for other purposes, was read, and the rule requiring bills to be read on three several days being dispensed with, the bill was read the second and third time forthwith and passed. *Ordered*, that the secretary acquaint the House of Representatives therewith.

A message from the House of Representatives by Mr Tunstall: Mr President, The House of Representatives have passed a bill, which originated in that House, entitled an act authorizing a lottery for the benefit of rising virtue lodge, No 4, in the town of Tuscaloosa: in which they desire your concurrence.

The bill mentioned in the foregoing message was read in the Senate; and the rule requiring bills to be read on three several days being dispensed with, the bill was read the second and third time forthwith. The question was then put, shall the bill pass? and decided in the affirmative. Yeas 12—Nays 3.

Those who voted in the affirmative are, Mr President, Abercrombie, Conner, Crawford, McVay, Merriwether, Perry, Powell, Ross, Smith, Walthall, Watkins. Those who voted in the negative are, messrs Evans, Hubbard and Pickett.

Mr Crawford, from the joint committee on enrolled bills, reported, as correctly enrolled, an act to divorce Robert C. Price from Elizabeth Price; an act to provide for taking the sense of the people of the county of Tuscaloosa upon the subject of removing the site of their courthouse and for other purposes; an act to extend the jurisdiction of the state of Alabama over the Creek Nation; an act to provide for the sale of a lot of land in the town of Cahawba to Joseph Babcock; an act supplemental to an act, passed at the present session of the General Assembly, entitled an act to extend the terms of Mobile circuit court; and an act making appropriations for the year 1829: all of which were accordingly signed by Mr President.

A message from the House of Representatives by Mr Tunstall: Mr President, The House of Representatives have passed a bill, which originated in their House, entitled an act more effectually to provide for the advertising of lands and negroes levied on by the sheriff of Montgomery county and for other purposes: in which they desire your concurrence.

A bill to be entitled an act more effectually to provide for the advertising of lands and negroes levied on by the sheriff of Montgomery county and for other purposes, was read; and the rule requiring bills to be read on three several days being dispensed with, the bill was read the second time, amended on Mr Perry's motion, and read the third time and passed. Ordered, that the secretary acquaint the House of Representatives therewith.

A message from the House of Representatives by Mr Tunstall: Mr President, The House of Representatives have passed a bill, which originated in their House, entitled an act to establish a road from Greensborough to Mobile and for other purposes: in which they desire your concurrence.

A bill to be entitled an act to establish a road from Greensborough to Mobile and for other purposes, was read. Mr Merriwether moved that the further consideration of the bill be postponed till the first day of the next session; which was carried, Yeas 7—Nays 6.

Those who voted in the affirmative are, messrs Evans, Hubbard, McVay, Merriwether, Pickett, Powell and Walthall.—Those who voted in the negative are, Mr President, Abercrombie, Conner, Perry, Ross and Smith.

Mr Crawford, from the joint committee on enrolled bills, reported, as correctly enrolled, an act to ascertain the voice of the people of Pickens county relative to the removal of their present seat of justice; an act to allow additional compensation to M. D. Williams and John D. Terrell for their services as commissioners to close the unsettled accounts between the states of Alabama and Mississippi; an act to divorce Margaret Trimble from her husband Robert Trimble; an act to change the times of holding the circuit courts in the counties of Shelby and St Clair; an act to repeal in part an act entitled an act defining the liability of endorsers and for other purposes, approved Jan. 15, 1828; an act for the relief of the securities of Daniel Harrison, tax collector of the county of Bibb for the year 1828; an act to incorporate the town of Cottonport; an act for the relief of the legal representatives of Charles Pearson; an act to amend an act entitled an act to provide for the establishment of the permanent seat of justice in the county of Walker, passed 15th Jan. 1828; an act to change the name of and legitimate a certain person therein named; joint memorial to the congress of the United States, asking a postponement of the land sales in Jackson and Madison counties, and a change of the law regulating such sales, and to allow to occupants a preemption right; and an act for the relief of David M. Smithson: all of which were accordingly signed by Mr President.

A message from the House of Representatives by Mr Tunstall: Mr President, The House of Representatives concur in the amendment made by the Senate to the

bill entitled an act more effectually to provide for the advertising of lands and negroes levied on by the sheriff of Montgomery county and for other purposes.

Mr Moore of J. from the joint committee on enrolled bills, reported as correctly enrolled an act approving and confirming the contract made by the governors of Mississippi and Alabama in relation to the unsettled accounts between the two states; report and joint resolutions on the subject of the tariff of 1828; an act to authorize the judge of the county court and commissioners of revenue and roads of Limestone county to appoint some suitable person to transcribe certain parts of the records of the county court aforesaid; an act making a further appropriation for the officers of the general assembly and for other purposes; an act to authorize James Taylor to keep in repair a bridge built by him across Wills creek in St Clair county and for other purposes; an act amendatory of an act entitled an act establishing schools in the county of Mobile, passed Jan. 10, 1826; an act more effectually to provide for advertising of lands and negroes levied on by the sheriff of Montgomery county and for other purposes; and an act to repeal in part and amend an act entitled an act to amend an act entitled an act concerning roads, highways, bridges and ferries in the county of Mobile, approved Jan. 15, 1828: all of which were accordingly signed by Mr President.

A message from the governor, by Mr Thornton, secretary of state:

*January 29. 1829* —Mr President, I am instructed by the governor to inform your honorable body that he did on this day approve and sign the following bills to wit: an act to authorize the employment of an additional clerk for the bank of the state of Alabama; an act to change the times of holding the county courts for Jackson county and for other purposes; an act to increase the salary of the quartermaster general; an act supplementary to an act entitled an act to incorporate the Cahawba navigation company; an act to prevent extortion by public officers and for other purposes; an act to compel the President and Trustees of the town of Moulton to keep their streets in repair, and for other purposes; report and joint resolutions on the subject of the tariff of 1828; an act to authorize the judge of the county court and commissioners of revenue and roads of Limestone county to appoint some suitable person to transcribe certain parts of the records of the county court aforesaid; an act for the relief of David M. Smithson; an act to repeal in part and amend an act entitled an act to amend an act entitled an act concerning roads, highways, bridges and ferries in the county of Mobile, approved 15th January, 1828; an act to allow additional compensation to M. D. Williams and John D. Terrill for their services as commissioners to close the unsettled accounts between the states of Alabama and Mississippi; and an act approving and confirming the contract made by the governors of Mississippi and Alabama in relation to the unsettled accounts between the two states: all of which originated in the Senate.

On motion of Mr Merriwether, *Resolved*, that the House of Representatives be informed that the Senate has finished all the business before them, and are now ready to a *journ sine die*.

Mr Powell being in the chair. Mr McVay offered the following resolution: *Resolved unanimously* by the Senate, that they are deeply impressed with the able and impartial manner in which the President of this body has discharged the laborious and important duties of the chair during the present session, and that he is entitled to the thanks of the Senate for his dignified deportment and the impartial manner with which he, as presiding officer, has demeaned himself towards the members of this body; which was unanimously adopted. Whereupon Mr President addressed the Senate as follows:

Gentlemen of the Senate—I thank you for this renewed evidence of your approbation of my conduct as your presiding officer. It is not to be overlooked, however, that *you yourselves* in spite of *yourself*, must participate in that commendation which your partiality and kindness would confer on me alone; because *you yourselves* have sustained and supported me under every trial which I have had to encounter. I must ever appreciate the generous assistance which you have given me. This is no the first time gentlemen, that this body has bestowed upon me this distinguished mark of its liberal approbation; session after session, the kindness of confiding friends have cheered me with this public approbation of my services. But this now fills me with emotions which are peculiar and unutterable; not that this token of your approval is the highest which I have received, but because it is the *last*. Yes, sirs, I who was one of those who participated in the establishment of the constitution under which we live; I who have remained in the legislative councils of my country, from that hour to this; I who now behold around me



A large circle of friends who have long been associated with me in the advancement of the public prosperity—feel myself constrained to give you a warm, a generous, a lasting adieu! Believe me, gentlemen that I shall long, yes *long*, remember these liberal tokens of your personal regard: but I shall treasure up, with a yet fonder recollection, those measures of considerate and liberal legislation, which has conferred on the people of my senatorial district the enjoyment of their country and their home! These are reflections which shall be garnered up in the remembrances of men—they shall be green and verdant spots which shall brighten the memory of days which are past. Farewell, my friends, the hour of our dissolution is at hand. We are parting—I seriously apprehend that we are parting *for ever*! Farewell; may a liberal people appreciate your services! Farewell; your anxious families call and welcome you back to their deserted firesides! Farewell; your presiding officer deeply affected with the circumstances under which he leaves you—profoundly grateful for the estimate which you have made of his official department, tenders you and each of you, and the officers of this House, sincerely and ardently, his lasting and affectionate farewell!

On motion of Mr. McVay the Senate was then adjourned without day

NICHOLAS DAVIS, *President of the Senate.*

ATTEST, F. S. LYON, Secretary.